No. [redacted]

In The 1964

Supreme Court of the United States

201

WILLIAM W. SCRANTON, Governor et al.,
Appellants

v.

IRA WALTON DREW et al.,
Appellees

On Appeal from the United States District Court for the Middle District of Pennsylvania.

JURISDICTIONAL STATEMENT

EDWARD FRIEDMAN,
Deputy Attorney General,

ALAN MILES RUBEN,
Deputy Attorney General,

WALTER E. ALESSANDRONI,
Attorney General,

Counsel for Appellants.

Department of Justice,
Capitol Building,
Harrisburg, Pennsylvania.

Murrelle Printing Company, Law Printers, 203-207 Lockhart Street, Sayre, Pa.

TABLE OF CONTENTS

	Page
JURISDICTIONAL STATEMENT:	
Opinions Below	2
Jurisdiction	2
Questions Presented	4
Constitutional and Statutory Provisions Involved	6
STATEMENT:	
The Senate	7
The House of Representatives	8
The Litigation	9
The Questions Are Substantial	13
Conclusion	20
APPENDIX A:	
I. Opinion and Order denying application for preliminary injunction dated December 6, 1963	A1
II. Opinion dated April 9, 1964, as amended by Order of April 14, 1964	A9
III. Findings of Fact and Conclusions of Law filed April 9, 1964	A44
IV. Judgment dated April 9, 1964	A70
APPENDIX B:	
I. Constitution of the Commonwealth of Pennsylvania:	
Article II, Section 16	B1
Article II, Section 17	B2
Article II, Section 18	B2

II. Constitution of the Commonwealth of Pennsylvania:

Article VII, Section 1 ..... B3

III. Pennsylvania Representative Apportionment Act of January 9, 1964, No. 1 ..... B4

IV. Pennsylvania Senate Apportionment Act of January 9, 1964, No. 2 ..... B27

APPENDIX C:

I. Chart entitled "The New Reapportionment in Pennsylvania Population and Representation by County" C1

II. Table from Pennsylvania Statistical Abstract, entitled "Area and Population of Counties, Urban and Rural: 1960" C4

III. Table from Pennsylvania Statistical Abstract, entitled "Voter Registration for Counties in Pennsylvania, November 5, 1963" C8

IV. Table from Pennsylvania Statistical Abstract, entitled "State Summary for Manufacturing Industries in Pennsylvania, by County: 1962" ... C11

V. Table from Pennsylvania Statistical Abstract, Fifth Annual Edition, 1962, entitled "Population of Municipalities in Pennsylvania With More Than 16,000 Population in 1960, by Type of Municipality" C15

TABLE OF CITATIONS

CASES:

Baker v. Carr, 369 U.S. 186 (1962) 3, 9

Beadle v. Scholle, No. 24 October Term, 1963 3

Davis v. Mann, No. 69 October Term, 1963 3

Germano v. Kerner, No. 636 October Term, 1963 ... 3

Gray v. Sanders, 372 U.S. 368 (1963) 3
MacDougall v. Green, 335 U.S. 281 (1948) 18
Maryland Committee for Fair Representation v. Tawes, No. 29 October Term, 1963 3
McConnell v. Frink, No. 41 October Term, 1963 3
McGowan v. Maryland, 366 U.S. 420 (1960) 18
Nolan v. Rhodes, Nos. 454-455 October Term, 1963 3
Reynolds v. Sims, No. 23 October Term, 1963 3
Reynolds v. Sims, 32 L.W. 4547, 4548 ..... 18, 20
Roman v. Sincock, No. 307 October Term, 1963 3
Skinner v. Oklahoma, 316 U.S. 535 (1941) 18
Swann v. Adams, No. 297 October Term, 1963 3
Thigpen v. Meyers, No. 3[illegible] October Term, 1963 3
Vann v. Frink, No. 27 October Term, 1963 3
W. M. C. A., Inc. v. Simon, No. 20 October Term, 1963 3
Westberry v. Sanders, 376 U.S. 1 (1964) 3
Williams v. Moss, No. 476 October Term, 1963 3
Wright v. Rockefeller, 376 U.S. 52 (1964) 3

STATUTES:

28 U.S.C. §1253 3
28 U.S.C. §1343 ..... 2, 9
28 U.S.C. §2281 ..... 2, 10
28 U.S.C. §2284 ..... 2, 10
42 U.S.C. §1983 ..... 2, 9
Pennsylvania House of Representatives Apportionment Act of January 9, 1964, P. L. 1419, 25 Purdon's Pennsylvania Statutes Annotated, Sections 2221-2222 (Supp. 1964) 6, 18

Pennsylvania Senate Apportionment Act of January 9, 1964, P. L. 1432, 25 Purdon's Pennsylvania Statutes Annotated, Sections 2217-2220 (Supp. 1964) 6

CONSTITUTIONS:

Constitution of the Commonwealth of Pennsylvania:

Article II, Section 16 ..... 6, 7, 12

Article II, Section 17 ..... 6, 8, 12

Article II, Section 18 6

Constitution of the United States of America:
Fourteenth Amendment 1, 2, 12, 13, 14, 15, 17, 18

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. ——

William W. Scranton, Governor et al.,
Appellants

v.

Ira Walton Drew et al.,
Appellees

On Appeal From the United States District Court for the Middle District of Pennsylvania.

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Middle District of Pennsylvania, entered on April 9, 1964, invalidating the Pennsylvania Apportionment Acts of January 9, 1964, and the legislative apportionment provisions of the Pennsylvania Constitution as repugnant to the Fourteenth Amendment to the Constitution of the United States, and restraining Appellants from conducting elections thereunder. This Statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinions of the United States District Court for the Middle District of Pennsylvania on motion for preliminary injunction and on final hearing are unreported. Copies of the opinions, findings of fact, conclusions of law and the judgment of the District Court are attached hereto as Appendix A.

JURISDICTION

These class actions were brought under 42 U.S.C. §1983 and 28 U.S.C. §1343, to enjoin Appellants, State officials, from conducting any primary or general election for membership in the General Assembly of the Commonwealth of Pennsylvania under the allegedly discriminatory legislative apportionment provisions of the State Constitution and statutes enacted pursuant thereto, and to compel the apportionment of senatorial and representative districts in such a manner as would not deprive the Appellees, and others similarly situated, of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution.

A three judge court was convened pursuant to 28 U.S.C. §§2281, 2284.

The judgment of the District Court was entered on April 9, 1964, and notice of appeal was filed in that court on April 23, 1964. The jurisdiction of the Supreme Court

to review this decision by direct appeal is conferred by 28 U.S.C. §1253. The following decisions sustain the jurisdiction of the Supreme Court to review on direct appeal the judgment entered in this case: *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Wright v. Rockefeller*, 376 U.S. 52 (1964); *W.M.C.A., Inc. v. Simon*, No. 20 October Term, 1963; *Reynolds v. Sims*, No. 23 October Term, 1963; *Beadle v. Scholle*, No. 24 October Term, 1963; *Vann v. Frink*, No. 27 October Term, 1963; *Maryland Committee for Fair Representation v. Tawes*, No. 29 October Term, 1963; *McConnell v. Frink*, No. 41 October Term, 1963; *Davis v. Mann*, No. 69 October Term, 1963; *Roman v. Sincock*, No. 307 October Term, 1963; *Swann v. Adams*, No. 297 October Term, 1963; *Thigpen v. Meyers*, No. 381 October Term, 1963; *Nolan v. Rhodes*, Nos. 454-455 October Term, 1963; *Williams v. Moss*, No. 476 October Term, 1963; *Germano v. Kerner*, No. 636 October Term, 1963.

QUESTIONS PRESENTED

1. Whether the provision of the Pennsylvania Constitution which requires that each of the State's 67 counties, regardless of population, elect at least one member of the House of Representatives operates to invidiously and irrationally discriminate against citizens of the more populous counties where the percentage of representation of such populous counties in the House of Representatives is substantially equal to their percentage of the State's population.

2. Whether the provision of the Pennsylvania Constitution which entitles each county containing four or less ratios of population to elect a member to the House of Representatives for each such ratio and an additional member for an excess of population of one-half ratio while requiring that counties having five or more ratios elect all Representatives only on the basis of full population ratios results in invidious and irrational discrimination against the two counties of the Commonwealth which are affected thereby.

3. Whether the provisions of the Pennsylvania Representative Apportionment Act which create 39 multi-member districts, wherein the members are elected at large, and 116 single-member districts, operate to invidiously and irrationally discriminate against the citizens of the single-member districts and in favor of the citizens of the multi-member districts.

4. Whether the Pennsylvania Constitution operates to irrationally and invidiously deny certain citizens of the

Commonwealth the equal protection of the laws by virtue of its provision that no city or county shall be entitled to representation in the State Senate exceeding one-sixth of the whole number of State Senators.

5. Whether the provision of the Pennsylvania Constitution which entitles counties to one Senator for each full population ratio and an additional Senator for a surplus of population exceeding three-fifths of a ratio operates to invidiously and irrationally discriminate against the two counties of the Commonwealth having a surplus of population in excess of one-half but less than three-fifths of a ratio.

6. Whether any disparities in representation resulting from legislative compliance with the directives of the Pennsylvania Constitution mandating the method of apportioning the Houses of the Pennsylvania Legislature constitute such gross, irrational and invidious discrimination as to deny the equal protection of the laws to certain citizens of the Commonwealth of Pennsylvania.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sections 16, 17 and 18 of Article II and Section 1 of Article VIII of the Constitution of the Commonwealth of Pennsylvania, the Pennsylvania House of Representatives Apportionment Act of January 9, 1964 P. L. 1419, 25 Purdon's Pennsylvania Statutes Annotated, Sections 2221-2222 (Supp. 1964), and the Pennsylvania Senate Apportionment Act of January 9, 1964, P. L. 1432, 25 Purdon's Pennsylvania Statutes Annotated, Sections 2217-2220 (Supp. 1964), are set forth in Appendix B hereto.

STATEMENT

The General Assembly of the Commonwealth of Pennsylvania is a bicameral legislative body. Representation in each house is governed by apportionment formulae established by the Constitution.

THE SENATE

Section 16 of Article II establishes 50 senatorial districts, each entitled to elect one senator. The districts, required to be of compact and contiguous territory as nearly equal in population as possible, are allocated among the 67 counties through a "senatorial ratio", which is computed by dividing the population of the Commonwealth by 50.

Each county containing one or more ratios of population is entitled to one senator for each full ratio, and to an additional senator for a surplus of population exceeding 3/5 of a ratio, subject to the limitation that no county may be entitled to separate representation exceeding 1/6 the whole number of senators. Every county containing more than 4/5 of a ratio but less than a full ratio is entitled to elect one senator. A county containing more than 1/2 but less than 4/5 of a ratio may form a separate senatorial district only where all of the counties adjoining it are each entitled to one or more senators. A county not separately entitled to representation is combined with other counties in the formation of a district.

The boundaries of the senatorial districts are further influenced by a prohibition against dividing any ward, borough or township to form a district and a similar limitation upon dividing a county unless it is entitled to two or more senators.

THE HOUSE OF REPRESENTATIVES

Unlike the constitutional provision applicable to the Senate, Section 17 of Article II does not provide for a fixed number of members in the House of Representatives. The membership of the House and the apportionment of representatives among the 67 counties are determined on the basis of a "representative ratio", which is computed by dividing the population of the State by 200. The larger counties are thereby assured representation in the House of Representatives equivalent to their proportion of the State's population. Each county is entitled to at least one representative, regardless of its population. The smaller counties are thereby assured a voice in this branch of the Legislature. Counties having a population containing less than 5 ratios are assigned one representative for each whole ratio and an additional representative for a remaining fraction of a ratio greater than 1/2. However, counties having a population of 5 or more ratios are entitled to only one representative for each whole ratio. Counties whose population exceeds 100,000 may be subdivided into multi-member districts of compact and contiguous territory, and each district may elect its proportionate number of representatives up to a maximum of 4.

While cities within a county may also be subdivided into representative districts, each city containing a population equal to a ratio elects separately its own proportion of the total number of representatives allocated to the county in which it is situated.

THE LITIGATION

In the aftermath of *Baker v. Carr*, 369 U.S. 186 (1962), 5 voters from as many counties of Pennsylvania [1] brought a class action pursuant to the Civil Rights Act, 42 U.S.C. §1983 and 28 U.S.C. §1343, before a statutory three judge court challenging the validity of the State constitutional provisions referred to above and the implementing statutes apportioning the General Assembly of the Commonwealth.

The complaint charged that the method of apportionment provided for by the Constitution of the Commonwealth invidiously discriminates in favor of lesser populated, rural areas to the great disadvantage of voters, such as Appellees, who reside in the more densely populated, urban and suburban areas of the State. The discrimination was alleged to be without rational reason and to result in disproportionate representation in both houses of the General Assembly in favor of the sparsely populated areas. It was further averred that the constitutional provision permitting multiple-member representative districts

[1] Ira Walton Drew, Philadelphia County; J. Claude Bowen, Bucks County; John B. McCrea, Montgomery County; Irving Kaufman, Delaware County; Jean McCoskey, Luzerne County.

within the same county is also irrational and discriminatory.[2]

Appellees summated their complaints with the conclusion that they have been denied the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

Upon application, a three judge district court was convened pursuant to 28 U.S.C. §§2281, 2284. Appellees moved for a temporary order restraining the Appellants,[3] all State officials having duties in connection with the election laws and processes of the Commonwealth, from conducting any primary or general election for members of the General Assembly under the existing constitutional and statutory apportionment framework. In addition, they sought to enjoin the enactment of apportionment legislation then being considered by a special session of the General Assembly and to compel the adoption of legislation which would apportion the senatorial and representative districts in a constitutionally permissible manner.

At a hearing before the full court on December 4, 1963, the Appellees' application for a temporary injunc-

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[2] This issue was raised by another voter, Marshall J. Seidman, of Montgomery County, who was permitted to intervene as a plaintiff. Two other voters were permitted to intervene as defendants, but subsequently, on their own motion, were allowed to withdraw from the action.

[3] William W. Scranton, Governor of the Commonwealth of Pennsylvania; George I. Bloom, Secretary of the Commonwealth of Pennsylvania; Walter E. Alessandroni, Attorney General of the Commonwealth of Pennsylvania; Raymond P. Shafer, President of the Senate of the Commonwealth of Pennsylvania; M. Harvey Taylor, President Pro Tempore of the Senate of the Commonwealth of Pennsylvania; W. Stuart Helm, Speaker of the House of Representatives of the Commonwealth of Pennsylvania.

tion was denied as premature without prejudice to their right to contest the new apportionment legislation then pending in the General Assembly.

On January 9, 1964, two reapportionment acts were adopted in compliance with the commands of the Constitution of Pennsylvania. One apportioned the State into representative districts and fixed the number of representatives at 209. The other apportioned the State into 50 senatorial districts. The apportionment of representative and senatorial districts among the several counties of the Commonwealth mandated by these acts is shown in Appendix A at pp. A14-A18.

On January 15, 1964, another group of five voters[4] filed an action against the Secretary of the Commonwealth to declare the two apportionment acts unconstitutional and to enjoin him from performing his duties in connection with the holding of primary and general elections.

The two actions were consolidated by the court and a final hearing was held on January 16th and 17th, 1964. Further testimony and documentary evidence were received and the proceedings of the hearings on December 4, 1963 were incorporated into the record.

On April 9, 1964 the District Court handed down its opinion, findings of fact and conclusions of law, and entered judgment in the case.

Finding that the disparity among the populations of the various senatorial districts fitted a "pattern of dis-

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[4] Michael Johnson, Montgomery County; Harry Block, Philadelphia County; Henry P. Groton, Delaware County; Eugene Joseph Considine, Luzerne County; Frederick Blair Hughes, Clearfield County.

crimination against * * * the people of the large metropolitan counties where the city and suburban voters dwell * * *", the District Court concluded that the scheme of senatorial apportionment violated the Fourteenth Amendment. In the court's view, the basis for the discrimination lay in the constitutional limitation upon a city or county having more than 8 senators and in the constitutional provision that a county having one or more ratios of population is entitled to an additional senator for a surplus of population over its full ratios only if that surplus exceeds 3/5 of a ratio. Consequently, the court held these portions of Section 16 of Article II of the Pennsylvania Constitution to be without force or effect.

With respect to the apportionment of representatives, the District Court found a substantial under-representation of the more populous counties, and a gross over-representation of the 13 least populous counties resulting in invidious discrimination against urban voters. The basis for the discrimination the court again held, lay in provisions of the Pennsylvania Constitution. The court fixed the blame upon the following provisions of Section 17 of Article II: (1) The requirement that each county, no matter how small its population, is entitled to at least one representative; (2) The restriction, applicable to counties having 5 or more ratios of population, that additional representation must be based upon full ratios of population; (3) The direction that counties be used as bases of representation and that county lines may not be crossed in the formation of legislative districts.

Accordingly, these provisions were also declared void by the District Court.

The court also found the pattern of single and multiple-representative districts created by the Representative Apportionment Act wholly arbitrary and discriminatory and, therefore, invalid.

On this reasoning the court determined that an injunction should issue restraining the Appellant State officials from enforcing the Apportionment Acts of 1964 and conducting primary or general elections thereunder. Moreover, it retained jurisdiction of the consolidated actions until such time as a valid reapportionment of the General Assembly was effected by that body.

Appellants' motion for a stay pending appeal to this court was granted on April 14, 1964.

THE QUESTIONS ARE SUBSTANTIAL

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1. Pennsylvania's scheme of legislative apportionment involves a unique blend of constitutional mandate, statutory implementation and population data. Determination of the constitutional validity of the apportionment systems in force in other states are therefore unlikely to be dispositive of the issues raised by the present appeal.

2. The decision of the District Court nullifies the legislative representation provisions of the Constitution of the Commonwealth of Pennsylvania as repugnant to the Equal Protection guarantee of the Fourteenth Amendment, thereby raising issues of the gravest importance and yet of the most delicate character.

Pennsylvania is the nation's third largest state whose 11,000,000 citizens represent more than 6% of the total population of the country. The impact of the instant decision will be felt by every inhabitant and will alter radically long established political, social and economic relationships without any mandate for such change from any substantial portion of the public.

The court below declared that Pennsylvania must modify its very constitutional framework as the price of obedience to the demands of Union. Collision between the directives of the State Constitution and the prohibitions imposed by the Fourteenth Amendment ought only to be declared by this Court after the most solemn deliberation.

Of course, the structure of representative government must be preserved inviolate, free from impediments which would distort the will of the electorate. *Baker v. Carr*, 369 U. S. 186 (1962), makes clear that the Federal Courts have power to preserve and restore integrity to the democratic electoral process. But, the power to overturn constitutional directive and legislative judgment and to invade the political arena in order to formulate the basis of legislative representation must be exercised sparingly and not beyond the necessities of the case. A due regard not only for the proper spheres of federal and state authority, but also for the principle of Separation of Powers requires judicial restraint.

Therefore, "invidious discrimination" in the context of legislative apportionment must mean more than small imbalances and imperfections. It must mean more than mere deviation from mathematical equality of representation. It must mean at least a condition where the apportionment procedures are so warped as to effectively fore-

close the avenues for representation of minority views or as to thwart the will of the majority by imposing minority control. Such disparities as may be found to exist in the present Pennsylvania apportionment picture do not rise to such magnitude.

As the court below found, there are, within a single county, community, ethnic and cultural interests which are not shared with residents of other counties. Pennsylvania's apportionment system, relating representation to the county unit, thus assures adequate expression of minority opinion. Yet, that system does not result in minority domination. 59% of the total population of the State elect 52% of the Senate, 55% of the total population of the State elect 51% of the House of Representatives.

Surely, in light of the present apportionment framework, Pennsylvania voters have no need of the intervention of the federal judiciary for their protection.

3. The District Court found disparities between the population of certain selected combinations of counties and their representation in the General Assembly. Then, without delineating the concept or explaining how the standard was applicable to the facts, the court held that the inequalities constituted "invidious discrimination" within the prohibition of the Equal Protection Clause of the Fourteenth Amendment.

However, with respect to the Senate, the court declared that the malapportionment could be cured by transferring to the counties of Philadelphia, Luzerne and Lackawanna an additional senator each from the total allowed the smaller counties. This change would affect only six percent of the membership of the Senate.

With respect to the House of Representatives, the court stated that the assignment of an additional member each to Allegheny and Delaware counties,[5] together with a reduction of 10 members from the 13 smallest counties, would remedy the inequities in representation. This change would affect only six percent of the membership of the House.

If "invidious discrimination" is to be measured by a test of quantitative substantiality, more ought to be required than a "rule of six percent".

4. The court below saw in the present Pennsylvania apportionment pattern the results of a class struggle. It found invidious discrimination against one class of voters, the large city and suburban dwellers, and in favor of another, the rural voters. But the court relied upon materials entirely inappropriate for this purpose. The court equated size of population per county with degree of urbanization, and then proceeded to its conclusion of minority, rural domination of a majority, urban citizenry. In this the court erred. Population size is not necessarily equated with urbanization. Thus, one of the 13 "large urban counties", Lancaster, has a predominantly rural population,[6] while more than 50% of the inhabitants in 10 of the 48 smallest counties, Blair, Carbon, Cumberland, Elk, Lawrence, Lycoming, Mercer, Northumberland, Schuylkill and Venango, live in urban areas.[7]

Moreover, the degree of urbanization is not uniform within a county. An otherwise rural county may have an urban concentration—(city, borough or township)—larger than any of the municipalities in a preponderantly urban

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[5] The representation of Allegheny County would be increased from 28 to 29, and that of Delaware County from 9 to 10.

[6] See Appendix C, p. C6.

[7] See Appendix C, pp. C4-C7.

county. For example, Lancaster County, 51% of whose population is classified as "rural",[8] contains the City of Lancaster, thirteenth largest community in the Commonwealth.[9] It is, therefore, evident that the "pattern" of discrimination against urban dwellers and in favor of the rural population discerned by the District Court is entirely of its own making. In point of fact, as the county population and representation statistics set forth in Appendix C, pp. C1-C3, make clear, the large, urban counties receive representation in both Houses of the General Assembly substantially equivalent to their proportion of the State's total population.

5. The "invidious discrimination" which the court below found denied Appellees the Equal Protection of the Law is said to be manifest not in the debasement of votes, but rather in under-representation of urban areas and over-representation of rural counties. The court's reasoning in this regard is especially curious. The Constitution of Pennsylvania requires representation in both Houses of the General Assembly to be based upon *population*. The District Court not only accepted the validity of this directive, but promptly read it into the commands of the Fourteenth Amendment.

Not all persons counted in the population census of Pennsylvania are voters or eligible to vote. Requirements of residence and age must first be met and the process of registration must be completed. When the population of the counties of Pennsylvania are classified according to voting characteristics, a different pattern of representation is obtained.[10] The court below made no finding that, structured in this fashion, Pennsylvania's legislative apportionment is arbitrary or discriminatory. Yet, it is un-

[8] See Appendix C, p. C6.
[9] See Appendix C, p. C15.
[10] See Appendix C, pp. C8-C10.

equal representation of equal groups of *voters* which is the criterion under the Fourteenth Amendment, not the equal representation of unequally sized *population* groups.

6. The majority of instances of disparity between population size and legislative representation cited by the court below are attributable to the deliberate attempt to relate representation to the county unit. To the extent that the court requires the disregard of county political lines for the construction of house and senatorial districts, it works a fundamental and undesirable change in the structure of legislative government in Pennsylvania.

The governmental and judicial organization of the Commonwealth is based upon the county unit of government. Moreover, there are within a single county interests and relationships which are not shared with residents of other counties. Finally, since the year 1683, the economic and political foundation for community life has developed along county lines.

Shifting the basis for representation away from the county system will prevent effective presentation of minority views, disrupt and disorient political organization, confuse the voter and fragment the economic base upon which community life is built, and upon which the taxing power is exercised. The Fourteenth Amendment, it is submitted, permits the accommodation of such policy considerations in the apportionment of Pennsylvania's General Assembly. *Skinner v. Oklahoma*, 316 U. S. 535 (1941); *MacDougall v. Green*, 335 U. S. 281 (1948); *McGowan v. Maryland*, 366 U.S. 420 (1960). *Reynolds v. Sims*, 32 L.W. 4548, declares: "A state may legitimately desire to maintain the integrity of various political subdivisions . . . in designing a legislative apportionment scheme."

7. The Pennsylvania [illegible]resentative Apportionment Act of 1964 created 39 m[illegible] representative districts and 161 single-member districts. The court below concluded that the act was invalid to the extent that it did not uniformly divide the counties which are entitled to two or more representatives into single-member districts. Its decision in this regard was based more upon arm-chair philosophy than upon case law.

A voter in a multiple-member district will be favored, the court said, by having more than one member of the House "who will be especially concerned with his views and interests and amenable to his persuasion since they will want the benefit of his suffrage for re-election. The voter in a single-member district, however, will have only one representative to look to express his views and espouse his interests". But while the court with its right hand was extolling the advantages which a voter in a multi-representative district has over his less fortunate brethren, it held aloft, in its left hand, the virtues of single-member representation. "Minority groups living in particular localities may well be submerged in elections at large but can often make their voting power much more effective in the smaller single-member district in which they may live. Moreover, a much more widespread personal contact between the representative and his constituents and knowledge by the representative of the views and desires of the voters is possible in a single-member district than in a larger multi-member one where the number of voters is much greater and the responsibility of representation is divided among two or more representatives answerable to the same electorate."

Without attempting to explain away the supposed benefits of single-member districts or to balance them against those thought to inhere in multi-member districts,

the court merely held that voters in single-member districts are deprived of the voting power of voters in multi-member districts, and are thereby denied the Equal Protection of the Laws. This conclusion is diametrically opposed to the position of the Appellees who allege in their pleadings that it is the voters in the multi-member districts who are denied the equal protection of the laws.

The Appellants contend that both theories are politically unsophisticated. The truth is that there is little, if any, difference between the voting power of a citizen in a single-member representative district and one in a multi-member district. Both types of districts may validly exist, side by side. As this Court stated in *Reynolds v. Sims:* "One body could be composed of single-member districts while the other could have at least some multi-member districts." 32 L.W. 4547. The court below was entirely mistaken in holding otherwise.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that probable jurisdiction of this appeal should be noted, and that it should be set down for argument.

Respectfully submitted,

EDWARD FRIEDMAN
Deputy Attorney General
ALAN MILES RUBEN
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellants

Department of Justice
Capitol Building
Harrisburg, Pennsylvania

APPENDIX A

I.

OPINION AND ORDER DENYING APPLICATION FOR PRELIMINARY INJUNCTION DATED DECEMBER 6, 1963.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 8293

Ira Walton Drew, J. Claude Bowen, John B. McCrea, Irving Kaufman and Jean McCoskey,

Plaintiffs

and

Marshall J. Seidman,

Intervening Plaintiff

v.

William W. Scranton, Governor of the Commonwealth of Pennsylvania, George I. Bloom, Secretary of the Commonwealth of Pennsylvania, Walter E. Alessandroni, Attorney General of the Commonwealth of Pennsylvania, Raymond P. Shafer, President of the Senate of the Commonwealth of Pennsylvania, M. Harvey Taylor, President pro tempore of the Senate of the Commonwealth of Pennsylva-

nia and W. Stuart Helm, Speaker of the House of Representatives of the Commonwealth of Pennsylvania,

Defendants

and

Donald C. Rubel and Anne D. McKinley,

Intervening Defendants

Before MARIS, Circuit Judge, and SHERIDAN and NEALON, District Judges

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OPINION OF THE COURT SUR MOTION FOR PRELIMINARY INJUNCTION

MARIS, Circuit Judge.

This is a suit by Pennsylvania citizens and taxpayers. The complaint contains four prayers for relief. These are (a) for an injunction to restrain the Governor, the Secretary of the Commonwealth, the Attorney General, the President of the Senate, the President pro tempore of the Senate and the Speaker of the House of Representatives of the Commonwealth from conducting any primary or general election or performing any duty with respect thereto for seats in the General Assembly which is to be conducted in accordance with the apportionment required by the provisions (alleged to deprive the plaintiffs of the equal protection of the laws in violation of the 14th Amendment to the Federal Constitution) of Article II, sections 16, 17 and 18 of the State Constitution or any statute enacted pursuant thereto, or from performing any other act implementing or enforcing those provisions; (b)

for an injunction to restrain the Governor, the President and President pro-tempore of the Senate, the Speaker of the House of Representatives and all members of the Senate and House of Representatives presently convened in special session from considering, voting upon, enacting or placing into effect any bill or law which is drafted in accordance with said provisions of the State Constitution alleged to violate the 14th Amendment, or which embodies an apportionment which is substantially similar to that required under said provisions or which denies plaintiffs or others similarly situated the equal protection of the law; (c) for a mandatory injunction to require the defendants and the members of the Senate and House of Representatives of the Commonwealth to enact legislation which will apportion the senatorial and representative districts in such manner as will not deprive plaintiffs and others similarly situated of the equal protection of the law, and (d) for such other relief as may be proper to guarantee to the plaintiffs their right to the equal protection of the laws.

The plaintiffs have applied for a temporary injunction granting the relief referred to in clause (b) of the prayer of the complaint, i.e., to restrain the consideration and enactment by the Legislature of Pennsylvania, at its present special session, of reapportionment legislation drafted in accordance with the State Constitution or which denies the plaintiffs the equal protection of the laws. A hearing upon the application has been held and testimony has been taken. It appears that certain of the provisions of sections 16 and 17 of article II of the Pennsylvania Constitution which prescribe the manner in which the Legislature is to divide the state into senatorial and representative districts compel, if followed literally, the establishment

of districts having wide disparity in population per member. It appears further that these provisions operate in general to favor the counties with less population by giving them disproportionately larger representation in each house at the expense of the more populous counties.

We have no doubt of the power of this court to consider the validity under the 14th Amendment of those provisions of the Constitution of Pennsylvania which prescribe the manner in which the districts for the election of the members of its Senate and House of Representatives are to be constituted. This we may and must do when it becomes necessary in order to decide the constitutional validity of the statutes enacted in conformity with those provisions of the Pennsylvania Constitution and which implement them by actually apportioning the territory of the state into senatorial and representative districts. Baker v. Carr, 1962, 369 U.S. 186; Sincock v. Duffy, D. C. Del. 1963, 215 F. Supp. 169. We recognize, at the same time, that this power is a grave and delicate one, involving a great responsibility, which should be exercised cautiously and only when the question of constitutionality is squarely presented in a way which makes its determination unavoidable. The question of the constitutionality of the existing apportionment statutes is raised by prayer (a) of the complaint and that question will, therefore, doubtless be presented to us with respect to the Acts of May 10, 1921, P. L. 449, and July 29, 1953, P. L. 956, or such statutes, if any, as are passed at the present special session of the Legislature to supersede them, when we come to consider the merits of the complaint on final hearing.

When thus properly presented these questions will be considered and decided. It is quite a different matter,

however, to be asked to adjudicate the possible constitutionality, if enacted, of bills which are merely under consideration by the Legislature and to restrain the Legislature from further considering or passing them. For we cannot now know in what amended form the Legislature may ultimately pass these bills, if it passes them at all, or whether, if passed, they will be approved by the Governor and become law. The plaintiffs' present motion is thus in reality a request by them for an advisory opinion to the Legislature as to the binding effect upon it, under the 14th Amendment, of certain limiting provisions of sections 16 and 17 of Article II of the Pennsylvania Constitution, an opinion which we are asked to give in vacuo and without having the benefit of knowing the extent to which the challenged provisions will be reflected in the implementing statutes which, when and if passed by the Legislature, will actually determine the rights of the plaintiffs and other citizens to representation in their Legislature. For it is perfectly clear that the Pennsylvania constitutional provisions in question are not self-executing and affect no one until they are implemented by legislation.

It would not appear that this court has the power to give such an advisory opinion. See 28 U.S.C. §2281. In any event we are satisfied that in the exercise of a sound discretion we should not attempt, upon this application for a temporary injunction, to pass upon the constitutional validity of the pending reapportionment bills upon the assumption that they will be enacted in their present form or that we should enjoin the Legislature from further consideration of them. In this connection we note that no showing of irreparable injury has been made. See Sincock

v. Terry, D. C. Del. 1962, 210 F. Supp. 396, 399-400. We will accordingly deny the plaintiffs' present application for a temporary injunction. We recognize, however, that under the other prayers of the complaint serious questions are raised as to the validity under the 14th Amendment of certain of the limitations laid by the Pennsylvania Constitution upon the Legislature in the creation of senatorial and representative districts and that these questioned limitations are reflected in the existing apportionment statutes and will in all probability also be reflected in any reapportionment statutes which the Legislature may enact at its present session. Accordingly our order will be without prejudice to the right of the plaintiffs to amend their complaint, if so advised, and to seek relief under prayers (a), (c) and (d) thereof upon final hearing with respect to the apportionment statutes which are then in effect.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 8293

Ira Walton Drew, J. Claude Bowen, John B. McCrea, Irving Kaufman and Jean McCoskey,

Plaintiffs

and

Marshall J. Seidman,

Intervening Plaintiff

v.

William W. Scranton, Governor of the Commonwealth of Pennsylvania, George I. Bloom, Secretary of the Commonwealth of Pennsylvania, Walter E. Alessandroni, Attorney General of the Commonwealth of Pennsylvania, Raymond P. Shafer, President of the Senate of the Commonwealth of Pennsylvania, M. Harvey Taylor, President pro tempore of the Senate of the Commonwealth of Pennsylvania and W. Stuart Helm, Speaker of the House of Representatives of the Commonwealth of Pennsylvania,

Defendants

and

Donald C. Rubel and Anne D. McKinley,

Intervening Defendants

Present: MARIS, Circuit Judge, and SHERIDAN and NEALON, District Judges

ORDER

Upon consideration of the plaintiffs' application for a temporary injunction to restrain defendants William W. Scranton, Governor of the Commonwealth of Pennsylvania, Raymond P. Shafer and M. Harvey Taylor, President and President pro tempore of the Senate of the Commonwealth of Pennsylvania, W. Stuart Helm, Speaker of the House of Representatives of the Commonwealth of Pennsylvania and all members of the Senate and House of Representatives presently convened in special session from considering, voting upon, enacting, signing, enrolling or otherwise placing into effect any bill, resolution, statute or law which is drafted in accordance with alleged unconstitutional provisions of the State Constitution, or which embodies an apportionment of the General Assembly which is substantially similar to that required under said provisions or which otherwise denies the plaintiffs and others similarly situated the equal protection of the law; and after full hearing

It Is Ordered that the application be and it hereby is denied.

By the Court,
(s) Albert B. Maris
Circuit Judge

December 6, 1963

H.

OPINION DATED APRIL 9, 1964, AS AMENDED BY ORDER OF APRIL 14, 1964

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 8293

Ira Walton Drew et al.,

Plaintiffs

and

Marshall J. Seidman,

Intervening Plaintiff

v.

William W. Scranton et al.,

Defendants

Civil Action No. 8338

Michael Johnson et al.,

Plaintiffs

v.

George I. Bloom,

Defendant

Before MARIS, *Circuit Judge*, and SHERIDAN and NEALON, *District Judges*.

OPINION OF THE COURT

(Filed April 9, 1964)

By MARIS, *Circuit Judge*:

Ira Walton Drew, of Philadelphia, J. Claude Bowen of Bucks County, John B. McCrea of Montgomery County, Irving Kaufman of Delaware County, and Jean McCoskey of Luzerne County, taxpayers and voters of the Commonwealth of Pennsylvania, on November 22, 1963 brought civil action No. 8293 against the Governor, the Secretary of the Commonwealth, the Attorney General, the President of the Senate, the President pro tempore of the Senate and the Speaker of the House of Representatives of the Commonwealth to restrain the defendants from conducting any primary or general election for members of the General Assembly in accordance with the apportionment required by the alleged unconstitutional provisions of Article II, Sections 16, 17 and 18, of the State constitution, or any statute enacted pursuant thereto, to enjoin the enactment and enforcement of legislation being considered by a special session of the General Assembly of the Commonwealth for the reapportionment of the membership of the Senate and House of Representatives, and to require the defendants and the members of the Senate and House of Representatives of the General Assembly to enact legislation which would apportion the senatorial and representative districts in such manner as would not deprive the plaintiffs and others similarly situated of the equal

protection of the laws. Thereafter, Marshall J. Seidman of Montgomery County, a taxpayer and voter of the Commonwealth, intervened as a plaintiff and Donald C. Rubel and Anne D. McKinley of Philadelphia, taxpayers and voters, intervened as defendants. Subsequently the intervening defendants were on their motion permitted to withdraw from the action.

This court of three judges was constituted under 28 U.S.C. §§2281, 2284, and on December 4, 1963 heard plaintiffs' application for a temporary injunction to restrain the enactment of the reapportionment legislation then pending in the General Assembly. On December 9, 1963 the application was denied as premature, without prejudice to the plaintiffs' right to seek relief on final hearing with respect to the apportionment statutes which might then be in effect. F. Supp. . Thereafter, the General Assembly passed and the Governor approved two reapportionment bills, the Act of January 9, 1964, No. 1, which fixed the number of representatives at 209 and apportioned the state into representative districts, and the Act of January 9, 1964, No. 2, which apportioned the state into 50 senatorial districts.

On January 15, 1964 Michael Johnson of Montgomery County, Harry Block of Philadelphia, Henry P. Groton of Delaware County, Eugene Joseph Considine of Luzerne County and Frederick Blair Hughes of Clearfield County, voters and taxpayers of the Commonwealth, filed civil action No. 8338 against the Secretary of the Commonwealth to declare the two Acts of January 9, 1964 unconstitutional and invalid and to enjoin the defendant from performing the duties imposed upon him by the Pennsylvania Election Code in connection with the holding of

primary and general elections pursuant to those acts. The complaint asked the court to retain jurisdiction of the cause until such time as the General Assembly is apportioned in such manner as not to deprive plaintiffs of the equal protection of the laws. On motion of the plaintiffs in No. 8338 that action was consolidated with civil action No. 8293.

A final hearing of the consolidated actions on their merits was held on January 16 and 17, 1964, the evidence taken at the hearing on December 4, 1963 being incorporated into the record of the final hearing. Oral testimony was taken and much documentary evidence was received. The cases are now ready for decision, the court having carefully considered the evidence, the requests for findings of fact and conclusions of law and the able and exhaustive briefs which counsel have filed.

The plaintiffs contend that the two reapportionment acts of January 9, 1964 deny them the equal protection of the laws guaranteed by the Fourteenth Amendment to the federal constitution. They assert that in allotting representation in the Senate and the House of Representatives the acts discriminate against the more populous counties in favor of the less populous ones. This is unconstitutionally invidious, they say, because it amounts to discrimination against one class of voters, the large city and suburban dwellers who are mostly found in the more populous counties, and in favor of another, the rural voters who mostly reside in the less populous counties. It is clear that we have jurisdiction to entertain these suits and to determine the questions thus raised. Baker v. Carr, 1962, 369 U.S. 186.

We consider first the senatorial reapportionment act. Section 16 of Article II of the Pennsylvania constitution, which relates to senatorial districts, provides:

> "The State shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty."

The 1960 census determined the population of Pennsylvania to be 11,319,366. Dividing this figure by 50 gives a senatorial ratio of 226,387. One-half of a ratio is 113,193 and three-fifths is 135,832. Admittedly, following the directions of the Pennsylvania constitution and applying the senatorial ratio of 226,387, Act No. 2 of January 9, 1964 apportions the State into senatorial districts as follows:

District No.	*County*	*1960 Population*	*No. of Senators*
County with population of more than 8-3/5 ratios			
1	Philadelphia (part)	260,767	1
2	Philadelphia (part)	255,869	1
3	Philadelphia (part)	251,415	1
4	Philadelphia (part)	241,032	1
5	Philadelphia (part)	236,148	1
6	Philadelphia (part)	242,667	1
7	Philadelphia (part)	266,242	1
8	Philadelphia (part)	248,372	1
		2,002,512	8
County with population of more than 7 but less than 7-1/2 ratios			
37	Allegheny (part)	235,125	1
38	Allegheny (part)	233,003	1
40	Allegheny (part)	241,633	1
42	Allegheny (part)	226,269	1
43	Allegheny (part)	237,367	1
44	Allegheny (part)	233,086	1
45	Allegheny (part)	222,104	1
		1,628,587	7

District No.	*County*	*1960 Population*	*No. of Senators*
Counties with population of more than 2 but less than 2-1/2 ratios			
9	Delaware (part)	255,888	1
26	Delaware (part)	297,266	1
12	Montgomery (part)	262,794	1
17	Montgomery (part)	253,888	1
		1,069,836	4
Counties with population of more than 1 1/2 but less than 1-3/5 ratios			
39	Westmoreland	352,629	1
20	Luzerne	346,972	1
		699,601	2
Counties with population of more than 1 but less than 1-1/2 ratios			
10	Bucks	308,567	1
13	Lancaster	278,359	1
11	Berks	275,414	1
49	Erie	250,682	1
28	York	238,336	1
22	Lackawanna	234,531	1
16	Lehigh	227,536	1
		1,813,425	7

District No.	*County*	*1960 Population*	*No. of Senators*
Counties with population of more than 4/5 but less than 1 ratio			
15	Dauphin	220,255	1
46	Washington	217,271	1
19	Chester	210,608	1
47	Beaver	206,948	1
35	Cambria	203,283	1
18	Northampton	201,412	1
		1,259,777	6
Districts comprised of counties with population of less than 4/5 ratio			
29	Schuylkill, Lebanon	263,880	1
21	Butler, Lawrence	227,604	1
31	Mifflin, Juniata, Perry, Cumberland	211,620	1
32	Fayette, Greene	208,764	1
50	Mercer, Crawford	205,475	1
41	Jefferson, Amstrong, Indiana	201,682	1
24	Columbia, Lycoming, Montour	179,586	1
30	Blair, Huntingdon	176,727	1
25	Potter, McKean, Warren, Clinton, Cameron	161,787	1
34	Centre, Clearfield	160,114	1
27	Northumberland, Snyder, Union	155,706	1

District No.	*County*	*1960 Population*	*No. of Senators*
23	Bradford, Susquehanna, Tioga, Wyoming, Sullivan	147,740	1
48	Elk, Forest, Clarion, Venango	144,516	1
33	Franklin, Adams	140,078	1
36	Bedford, Fulton, Somerset	130,498	1
14	Carbon, Monroe, Pike, Wayne	129,851	1
		2,845,628	16
	Grand Total	11,319,366	50

Examining the foregoing tabulation with the statewide senatorial ratio of 226,387 in mind a general pattern of under-representation of the more populous counties and over-representation of those which are less populous appears, as is shown by the following table in which the counties are listed in order of their population:

Counties	*No. of Senators*	*Average Population Per Senator*
Philadelphia	8	250,314
Allegheny	7	232,655
Delaware and Montgomery	4	267,459
Westmoreland and Luzerne	2	349,800
Bucks, Lancaster, Berks, Erie, York Lackawanna and Lehigh	7	259,060

Counties	*No. of Senators*	*Average Population Per Senator*
Dauphin, Washington, Chester, Beaver, Cambria and Northampton	6	209,963
48 remaining counties, each with a population of less than 181,110 (4.5 of a senatorial ratio)	16	177,851
Entire State	50	226,387

The constitutional standard of equal protection of the laws in the area of legislative representation has been expressed in the phrase "one man—one vote".[1] This standard is embedded in the Pennsylvania constitutional provision here involved which requires that the fifty senatorial districts shall be "as nearly equal in population as may be". It must be conceded that exact equality in population is impossible and with the constant movement of our people would not continue to exist even if it were to be achieved on a given census date. The prohibition against dividing counties unless they are entitled to two or more senators would alone prevent the creation of districts of absolutely equal population. And so variations from the norm have been widely accepted as permissible if they occur at random and are not designed to discriminate

[1] Wesberry v. Sanders, 1964, U.S. ; Scholle v. Hare, Secretary of State, 1962, 367 Mich. 176, 116 N.W. 2d 350; Sincock v. Duffy, D. Del. 1963, 215 F. Supp. 169; Butterworth v. Dempsey, D. Conn. 1964, F. Supp. ; see also Advisory Commission on Intergovernmental Relations, Report on Apportionment of State Legislatures, Dec. 1962, p. 67; One Man—One Vote, a statement of basic principles of legislative apportionment, Twentieth Century Fund, 1962.

against particular classes or groups of voters. But when the variations from the norm fit into a pattern of discrimination against the voters living in particular areas, as they do here, the people of the large metropolitan counties where the city and suburban voters dwell being denied their equal share of representation in the Senate, and the people of the less populous counties, largely inhabited by rural voters being given much more than their equal share of such representation, they must be held to involve discrimination. When it appears, as it does, that the 13 most populous counties of the State are all under-represented and that 50 of the 54 less populous counties are over-represented, 28 of them by more than 25%, the conclusion is inescapable that such discrimination was deliberate and invidious in violation of the Fourteenth Amendment.[2]

The basis for this discrimination, as might be expected in the case of a statute which, as we have said, complies with the mandates of the Pennsylvania constitution, is to be found in that document. The plaintiffs point to three of the provisions of Section 16 of Article II quoted above, which they say compel this discrimination. The first is the provision that no city or county, regardless of its population, shall be entitled to more than 8 senators. The continuous effect of this provision since its adoption in 1873 has been to deprive the people of the city and county of Philadelphia of one or more senators to which its population would otherwise have entitled them under each decennial census since 1870. Under the 1960 census

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[2] Moss v. Burkhart, W.D. Okla. 1962, 207 F. Supp. 885; Magn v. Davis, E.D. Va. 1962, 213 F. Supp. 577; Sincock v. Duffy, D. Del. 1963, 215 F. Supp. 169; Davis v. Synhorst, S.D. Ia. 1963, 217 F. Supp. 492; Butterworth v. Dempsey, D. Conn. 1964, F. Supp.

Philadelphia has a population in excess of eight and three-fifths senatorial ratios and is accordingly entitled to nine senators except for this limiting provision.

The second provision of Section 16 which is asserted to discriminate against the people of the larger counties and in favor of those of the smaller ones is the limitation that a county containing one or more ratios of population may have an additional senator for a surplus of population over its full ratios only if that surplus exceeds three-fifths of a ratio. This provision, obviously, applies only to the most populous counties, under the 1960 census the 13 largest, and its inevitable effect is to reduce the number of senators which would be allotted to the larger counties if apportionment according to the more equitable rule of major fractions, the rule applied by Section 17 of Article II to the apportionment of representatives (except as to the larger counties), had been applied. Thus, by the present statute Westmoreland and Luzerne counties are each allotted one senator since neither county has one and three-fifths ratios, although each has more than one and one-half ratios and would be entitled to two senators under the rule of major fractions. By reason of the application of this constitutional provision each loses a senator to which it would be entitled under the application of the ordinary rule of major fractions.

The three additional senators to which Philadelphia, Westmoreland and Luzerne would appear to be entitled under the basic mandate of Section 16 of Article II of the Pennsylvania constitution for senatorial districts of substantially equal population are thus taken from the people of those counties by the two restrictive provisions under discussion and are necessarily, under the other provisions of Section 16, allotted to the people of the 48

counties having a population of less than four-fifths of a ratio (181,110), being the counties in which the bulk of the rural population of the State resides. The result is, inevitably, a great over-representation in the Senate of most of these counties. Two examples will suffice to show how disproportionate is the resulting representation. The 20th senatorial district, comprising densely populated largely urban and industrial Luzerne County, has 346,629 people, 53% in excess of the ratio for one senator, while the adjoining 14th district, comprising Carbon, Monroe, Pike and Wayne counties, largely rural, has a population of only 129,851, 42% less than a senatorial ratio. Likewise, the 39th district, comprising populous industrial Westmoreland County, has a population of 352,629, 56% in excess of the senatorial ratio, while the 36th district which adjoins it, consisting of predominately rural and agricultural Bedford, Fulton and Somerset counties, has a population of only 130,498, 42% below the ratio for one senator. While these are the most striking examples of disparity, the tables which we have set out above show that they are but instances of a general pattern of discrimination in representation against the urban and suburban areas and in favor of the rural areas of the State.

If the three senatorial seats to which we have referred were to be allotted to Philadelphia, Westmoreland and Luzerne instead of to the 48 smallest rural counties of the State, as the present act does, the present imbalance of representation would be almost entirely eliminated, although still leaving those 48 counties slightly over-represented. The following table gives the figures:

Counties	*No. of Senators*	*Average Population Per Senator*
Philadelphia, Allegheny, Delaware, Montgomery, Westmoreland, Luzerne	24	225,022
13 next most populous counties	13	236,400
48 least populous counties	13	218,894
Entire State	50	226,387

That an equitable apportionment of thirteen senators among the 48 least populous counties is feasible is demonstrated by the possible arrangement outlined in the following table:

District	*Counties*	*Population*
14	Carbon, Monroe, Pike, Wayne, Susquehanna, Wyoming and Sullivan	186,952
21	Butler and Lawrence	227,604
24	Lycoming, Tioga and Bradford	200,906
27	Columbia, Montour, Northumberland, Snyder and Union	225,925
29	Lebanon and Schuylkill	263,880
30	Blair, Huntingdon and Mifflin	221,075
31	Adams, Cumberland, Perry and Juniata	219,178
32	Greene and Fayette	208,764
34	Clearfield, Centre, Clinton, Cameron and Potter	221,802
36	Franklin, Fulton, Bedford and Somerset	218,670

District	*Counties*	*Population*
41	Armstrong, Clarion, Indiana and Jefferson	239,090
48	Elk, Forest, McKean, Venango and Warren	207,207
50	Crawford and Mercer	205,475
		2,845,628

It seems clear from the debates in the convention which produced the present Pennsylvania constitution that the provisions restricting representation of the more populous counties were the product of an agrarian philosophy which held that the inhabitants of the rural areas were more to be trusted with the responsibilities of government than the population of the cities, which contained a greater proportion of wicked and irresponsible men, as was said to be well known.[3] The defendants concede that the desire to protect the rural voters from domination by urban majorities was the basis for these restrictive provisions and they urge their validity. We think, however, that they are but the vestigial remnants of an undemocratic philosophy of an earlier age, and that they cannot stand against the mandate of the Fourteenth Amendment that all persons, and not rural dwellers only, shall be given the equal protection of the laws.[4]

The third provision of Section 16 of Article II of the Pennsylvania constitution which the plaintiffs assert compels discrimination against the more populous counties

[3] White, Commentaries on the Constitution of Pennsylvania, 1907, p. 195.

[4] Wesberry v. Sanders, 1964, U.S.

is the requirement that counties may not be divided in forming senatorial districts except when they are entitled to two or more senators. With this contention of the plaintiffs we cannot agree. On the contrary, we think, as do the defendants, that there is a rational basis for respecting county lines in this regard and that the disparities in representation from the normal ratio which compliance with this requirement produces are random and not invidiously discriminatory, provided that the larger counties are allotted, as we think they must be, one senator for each full ratio and an additional senator for any surplus population exceeding one-half a ratio. We do not mean to suggest, nor does the Pennsylvania constitution, that counties should be given equal representation in the Senate or that the so-called federal analogy is applicable. But it nonetheless remains true that counties in Pennsylvania have from early colonial times been political and governmental units in which the voters have acted together both in elections and in many other ways. Counties have formed units for the organization and activities of political parties and of many other kinds of citizens' associations. It is doubtless the fact, as the plaintiffs urge, that the cities, boroughs, townships and school districts within the counties loom larger in the public mind in local government than do the counties. But it remains true, we believe, that the bulk of the people of a Pennsylvania county have a definite community of interest which they do not share with the people of other counties, even adjoining ones. To fractionize counties by including *parts* of two or more in a single district would, we think, probably result in greater harm by way of confusing the voters accustomed to acting politically in their own county or its subdivisions, than in the good it might do in bringing about a theoretically more perfect equality of representation. However, if a

blind adherence to this county unit principle would create a situation in which invidious discrimination would exist unless a county is divided, the county unit principle may well have to give way to the mandate of the Fourteenth Amendment. The evidence before us does not disclose such a situation.

Nor does the evidence require us, in the case of senatorial apportionment, to hold that the county unit principle must be extended to the point of allotting a senator to each county having less than four-fifths but more than one-half a ratio. The Pennsylvania Constitution does not contemplate this but, on the contrary, requires that such counties, unless entirely surrounded by counties entitled to one or more senators, shall be joined with other counties in forming senatorial districts. Since this procedure tends to produce senatorial districts more closely approximating the senatorial ratio than if such below-ratio counties were set up as separate districts, it obviously does not run afoul of the Fourteenth Amendment.

We conclude that the Act of January 9, 1964, No. 2, which provided for senatorial reapportionment, violates the Fourteenth Amendment in denying to Philadelphia, Westmoreland and Luzerne Counties one additional senator each and in alloting those three senators to the less populous counties of the State. To the extent that Sections 16 and 18[3] of Article II of the Pennsylvania

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[3] Section 18 of Article II of the Pennsylvania constitution provides:

"The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections."

constitution appear to compel this result they may not be regarded as mandatory[6] upon the General Assembly of the Commonwealth which is bound to comply with the equal protection clause of the Fourteenth Amendment to the federal constitution as the supreme law of the land.[7]

We turn then to consider the Act of January 9, 1964, No. 1, which reapportions the members of the House of Representatives of the Commonwealth and fixes representative districts. Section 17 of Article II of the State constitution which regulates this apportionment provides:

> "The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two-hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county

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[6] It may well be that in the light of the Fourteenth Amendment, which was in force when the present Pennsylvania constitution was adopted, these provisions should be construed as directory only.

[7] Sims v. Frink, M.D. Ala. 1962, 208 F. Supp. 431; Valenti v. Dempsey, D. Conn. 1962, 211 F. Supp. 911; Sincock v. Duffy, D. Del. 1963, 215 F. Supp. 169; Butterworth v. Dempsey, D. Conn. 1964, F. Supp.

having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives."

The ratio for representatives under the 1960 census is 56,597 (11,319,366 divided by 200). One-half a ratio is 28,298. In accordance with these constitutional requirements and applying this representative ratio, Act of January 9, 1964, No. 1, fixed the number of representatives at 209 and allotted them to the counties as follows:

County	*Population*	*No. of Representatives*
County with population of more than 35 but less than 35-1/2 ratios		
Philadelphia	2,002,512	35
County with population of more than 28-1/2 but less than 29 ratios		
Allegheny	1,628,587	28
County with population of more than 9-1/2 but less than 10 ratios		
Delaware	553,154	9
County with population of more than 9 but less than 9-1/2 ratios		
Montgomery	516,68_	9
Counties with population of more than 6 but less than 6-1/2 ratios		
Westmoreland	352,629	6
Luzerne	346,972	6

County with population of more than 5 but less than 5-1/2 ratios

Bucks	308,567	5
	5,709,103	98

Counties with population of more than 4-1/2 but less than 5 ratios

Lancaster	278,359	5
Berks	275,414	5

County	*Population*	*No. of Representatives*

Counties with population of more than 3-1/2 but less than 4-1/2 ratios

Erie	250,682	4
York	238,336	4
Lackawanna	234,531	4
Lehigh	227,536	4
Dauphin	220,255	4
Washington	217,271	4
Chester	210,608	4
Beaver	206,948	4
Cambria	203,283	4
Northampton	201,412	4

Counties with population of more than 2-1/2 but less than 3-1/2 ratios

Schuylkill	173,027	3
Fayette	169,340	3

Counties with population of more than 1-½ but less than 2-½ ratios

Blair	137,270	2
Mercer	127,519	2
Cumberland	124,816	2
Butler	114,639	2
Lawrence	112,965	2
Lycoming	109,367	2
Northumberland	104,138	2
Lebanon	90,853	2
Franklin	88,172	2

Counties with population of more than ½ but less than 1-½ ratios

Clearfield	81,534	1
Armstrong	79,524	1
Centre	78,580	1
Crawford	77,956	1
Somerset	77,450	1
Indiana	75,366	1
Venango	65,295	1
Bradford	54,925	1
McKean	54,517	1
Columbia	53,489	1
Carbon	52,889	1
Adams	51,906	1
Jefferson	46,792	1
Warren	45,582	1
Mifflin	44,348	1
Bedford	42,451	1
Monroe	39,567	1
Huntingdon	39,457	1
Greene	39,424	1

Clinton	37,619	1
Clarion	37,468	1
Elk	37,328	1
Tioga	36,614	1
Susquehanna	33,137	1
	5,399,899	98

County	*Population*	*No. of Representatives*
Counties with population of less than 1/2 ratio		
Wayne	28,237	1
Perry	26,582	1
Union	25,646	1
Snyder	25,922	1
Wyoming	16,813	1
Montour	16,730	1
Potter	16,483	1
Juniata	15,874	1
Fulton	10,597	1
Pike	9,158	1
Cameron	7,586	1
Sullivan	6,251	1
Forest	4,485	1
	210,364	13
Grand Total	11,319,366	209

When we study this apportionment in the light of the representative ratio of 56,597 we see a substantial under-representation of the more populous counties, particularly

Allegheny and Delaware, and a gross over-representation of the thirteen least populous counties. This is shown by the following table:

Counties	*No. of Representatives*	*Average Population Per Representative*
Philadelphia (the most populous)	35	57,214
Allegheny (second most populous)	28	58,163
Delaware (third most populous)	9	61,461
Montgomery, Westmoreland, Luzerne, Bucks (next most populous)	26	58,648
47 next most populous counties (less than 5 ratios and more than ½ ratio each)	98	55,101
13 least populous counties (less than ½ ratio each)	13	16,182
Entire State	209	54,159[8]

What has already been said regarding the disparities in senatorial apportionment largely applies here, particularly with respect to the thirteenth smallest sparsely populated rural counties. Here again the basis for this discrimination is to be found in the provisions of the Pennsylvania constitution. The plaintiffs urge that three provisions of Section 17 of Article II are responsible.

[8] This is not the representative ratio but the figure obtained by dividing the population of the State by 209.

The first of these to which they point is the requirement that each county, no matter how small its population, shall have at least one representative. Its effect is to give a representative to each of the thirteen counties having less than one-half a representative ratio, ranging from Wayne with a population of 28,237 to Forest with a population of 4,485, thus providing a representative, on the average, for each 16,182 persons which is only 29% of the state ratio. The most extreme example is Forest county with one representative for only 8% of a ratio. We are clear that this amounts to discrimination in favor of the people of these small rural counties which is invidious since it inevitably dilutes the representation of the people of the more populous counties. The defendants urge that county lines should be respected and we have agreed in general with that proposition. We agree, as we have suggested in discussing senatorial apportionment, that the use of the county as a unit of representation will not run afoul of the equal protection clause to the extent that such use may involve departing from strict equality of representation. But we think that the disparities which result must operate in a purely random and unpremeditated way, and must not exceed or fall short of, as the results of a particular census may dictate, the statewide ratio population by more than a major fraction. This, of course, is not to say that the county unit may be used in such a way as to result in an intentional and inevitable distortion of representation either in favor of or against the people of the county involved. That is the case here with regard to these thirteen least populous Pennsylvania counties. There is no practical reason why, in order to eliminate this built-in discrimination in favor of their people, they should not be added to adjoining counties to form single member representative districts, just as is done in the

case of senatorial districts, just as is done in Pennsylvania with respect to most of these counties in forming judicial districts,[9] and just as was done before the constitution of 1873 with respect to representative districts themselves.[10] That this may readily be accomplished in an equitable way is apparent from the possible arrangement indicated in the following table:

Counties	*Population*
Wayne and Pike	37,395
Perry and Juniata	42,456
Union and Snyder	51,568
Susquehanna and Wyoming	49,950
Columbia and Montour	70,219
Potter and Tioga	53,097
Huntingdon and Fulton	50,054
Elk and Cameron	44,914
Bradford and Sullivan	61,176
Clarion and Forest	41,893

In addition to the discrimination against the people of the more populous counties which results from the separate representation allotted to the smallest counties, the plaintiffs point to the restriction, applicable only to the counties having five or more ratios of population, against being allotted an additional representative for a surplus of population exceeding one-half a ratio. Under the 1960 census this restriction applies to the second and third most populous counties, Allegheny and Delaware, depriving each of them of an additional representative

[9] Act of January 8, 1952, P.L. (1951) 1844, 17 P.S. (Pa.) § 784.

[10] See Acts of May 20, 1857, P.L. 619; May 5, 1864, P.L. 258; May 6, 1871, P. L. 252; Buckalew, Constitution of Pennsylvania, 1883, pp. 62-63.

for its surplus of population which exceeds one-half a ratio, a surplus which would have entitled each of them to an additional representative under Section 17 had they been counties with less than five ratios of population. We agree that this provision also is invalid as involving invidious discrimination against the people of these counties, since its only possible purpose and effect is to reduce the number of representatives allotted to the more populous counties below what it would be on a proportional basis, and thereby to increase the representation accorded to the people of the more sparsely populated rural counties above that basis.

The third provision upon which the plaintiffs rely is the requirement that counties be used as bases of representation and that no county or part of a county be joined with another county for that purpose. With respect to counties having less than one-half a ratio of population we agree with the plaintiffs' contention, as we have already indicated. But so far as concerns counties having a population in excess of one-half a ratio we agree with the defendants, for the reasons already stated with regard to the senatorial apportionment, that the use of the county as a basis of representation does not in and of itself involve invidious discrimination in violation of the Fourteenth Amendment.

If Allegheny and Delaware counties were allotted the additional representatives to which, as we have seen, they are equitably entitled and if the thirteen counties having less than one-half a ratio of population are joined with others in some such way as suggested above, so as to form multiple-county districts of approximately ratio size, the invidious discrimination which now exists could be eliminated, as the following table demonstrates:

Counties	*Number of Representatives Population At Present As Suggested*		*Average Population Per Suggested Representative*	
7 most populous	(98)	100	5,709,103	57,091
60 others	(111)	101	5,610,263	55,547

It is true that even such an apportionment as this will not provide equality of representation with mathematical exactness. As we have seen, such exactness is impossible to achieve, especially when retaining the county as a unit of representation. But the disparities which would arise would be limited in extent to a maximum of one-half a ratio either way and they would be purely random and unpremeditated, depending solely on the particular census figures upon which the apportionment is based. The result indicated above under the 1960 census figures indicates a slight under-representation of the seven most populous counties. An analysis discloses that this result is due to the fact that more of the smaller counties showed a surplus of population exceeding one-half a ratio in 1960 than did the larger counties. In 1970 the census figures might well produce the opposite result.

The plaintiffs in No. 8338 and intervening plaintiff Seidman in No. 8293 make the contention that the representative reapportionment act, Act No. 1 of January 9, 1964, is also invalid to the extent that it does not uniformly divide the counties which are entitled to two or more representatives into single-member districts. This contention does not involve any attack on Section 17 of Article II of the Pennsylvania constitution since that section permits the creation of such districts. However, Section 17 does not require that a county be divided into

districts except when it has more than 100,000 population or contains a city having a population equal to a ratio. The section further provides that each district which is set up shall be composed of compact and contiguous territory and shall elect according to its population its proportion of the representatives allotted to the county, and that no district shall elect more than four representatives.

The representative reapportionment act sets up a curious pattern of representative districts in the larger counties. In all the counties entitled to two representatives, except Lebanon, single-member districts are created.[11] Likewise, in the cases of Lackawanna and York, entitled to four representatives, Berks, entitled to five, and Luzerne and Westmoreland, entitled to six, single-member districts are uniformly provided. But in the other larger counties no such pattern is followed, as appears from the following tabulation:

County	
Philadelphia	18 single-member districts 7 two-member districts 1 three-member district
Allegheny	8 single-member districts 5 two-member districts 2 three-member districts 1 four-member district
Delaware	1 single-member district 2 four-member districts

[11] Blair, Butler, Cumberland, Franklin, Lawrence, Lycoming, Mercer and Northumberland.

County	
Montgomery	3 two-member districts 1 three-member district
Bucks	1 single-member district 1 four-member district
Lancaster	1 single-member district 1 four-member district
Erie	2 single-member districts 1 two-member district
Lehigh	2 two-member districts
Dauphin	1 single-member district 2 two-member districts
Washington	2 two-member districts 2 two-member districts
Chester	2 single-member districts 1 two-member district
Beaver	2 single-member districts 1 two-member district
Cambria	1 single-member district 1 two-member district
Northampton	1 single-member district 1 two-member district
Schuylkill	
Fayette	

The defendants have offered no explanation for thus dividing fourteen of the larger counties entirely into single-member districts, while at the same time dividing the fifteen other larger counties, many of them adjoining the single-member district counties, into a crazy quilt of one, two, three and four-member districts. Compare, for example, the disparate treatment accorded to three quite homogeneous adjoining counties, Berks, Lancaster and York. In the absence of any legislative history or other explanation justifying it, and we have found none, we can only conclude that this districting is either the result of gerrymandering for partisan advantage, as was suggested at the hearing, or that it is wholly arbitrary and capricious.

The plaintiffs' contention is that thus providing a haphazard arrangement of two, three and four-member districts alongside of single-member districts violates the basic principle of one man—one vote which is, as we have seen, implicit in the constitutional concept of equal protection of the laws in this field. We are constrained to agree with this contention.

Theoretically, at least, when an electorate is called upon to select from their number a smaller group to speak and act for them in a representative assembly, each voter should participate in the selection of one of the representatives only. For since the persons elected are to comprise a boiled down reflection, as it were, of the larger electorate, and since each of them, therefore, in a very real sense stands in the assembly in the place of a group of voters, it would appear to interfere with and dilute the voting rights of others for a voter to participate in the election of more than one representative. It is doubtless upon this principle that the single-member dis-

trict system has become the widely accepted method of electing the members of Congress and of many other legislative bodies.

However this may be, we think that invidious discrimination in voting power results when, as in the case before us, some Pennsylvania voters may by reason of the arrangement of legislative districts vote for two, three or even four representatives, while others are restricted to voting for one only. Certainly a voter in a four-member district will not only have four votes for representative, but he will also have four members of the House who will be especially concerned with his views and interests and amenable to his persuasion, since they will want the benefit of his suffrage for reelection. The voter in a single-member district, however, will have only one representative to look to express his views and espouse his interests. We are, of course, not dealing here with a case where all the representatives are elected at large, so that each voter has the same number of votes as every other voter, or with a situation where the districts all elect the same number of members, whether two or more. Those situations do not violate the principle of one man—one vote. But we think that this principle means what it says. It does not mean, for example, in Allegheny County one man—one vote in McKeesport, two votes in Clairton, three votes in Wilkinsburg and four votes in Sewickley, which the statute under consideration authorizes.

It is likewise true we think, as the plaintiffs in No. 8338 urge, that the single-member district has important advantages over the multi-member district or election at large in bringing about a better representation of the body of the voters. Minority groups living in particular localities may well be submerged in elections at large but

can often make their voting power much more effective in the smaller single-member district in which they may live. Moreover, a much more widespread personal contact between the representative and his constituents and knowledge by the representative of the views and desires of the voters is possible in a single-member district than in a larger multi-member one where the number of voters is much greater and the responsibility of representation is divided among two or more representatives answerable to the same electorate.

We conclude that the Act of January 9, 1964, No. 1, which provided for the apportionment of State representatives violates the Fourteenth Amendment in denying to Allegheny and Delaware Counties one additional representative each, in allotting separate representatives to each of the thirteen counties having less than one-half a ratio of population instead of combining each of them with an adjoining county for the purpose of electing a representative, and in failing to divide Philadelphia, Allegheny, Delaware, Montgomery, Bucks, Lancaster, Erie, Lehigh, Dauphin, Washington, Chester, Beaver, Cambria, Northamption, Fayette and Lebanon counties into single-member districts for the election of representatives. Just as in the case of the senatorial apportionment law, to the extent that Sections 17 and 18 of Article II of the Pennsylvania constitution appear to compel this apportionment they may not be regarded as mandatory upon the General Assembly which must follow the mandate of the Fourteenth Amendment in this regard.

We desire to reiterate that we do not regard the departures from exact equality of representation resulting from the use of the county as a unit for the apportionment of senators and representatives and for the creation

of senatorial and representative districts to constitute a denial of the equal protection of the laws provided that the departure from the statewide norm or ratio reflected by the county's population does not exceed a major fraction ($\frac{1}{2}$) of a ratio. Such disparity within the limits of a major fraction of a ratio is unavoidable and its effect will be undesigned and random in the sense that it may go either way in the case of any county, depending entirely on the census figures. What we do hold to be a denial of equal protection of the laws to the people of the more populous counties are those provisions of each act which create imbalances in representation as the direct result of provisions of the Pennsylvania constitution which were designed and are effective to discriminate against them only, by giving more than their fair share of representation to the people of the rural areas of the State at the expense of the urban and suburban dwellers of those populous counties. We also hold that the provisions of the representative apportionment act for multi-member districts in certain parts of certain counties deny to the voters in the single-member districts of those and other counties the equal protection of the laws by depriving them of voting power equal to that of the voters of the multi-member districts.

It follows that an injunction must issue restraining the defendants from enforcing the recently enacted apportionment acts or conducting either primary or general elections thereunder. Under the Pennsylvania constitution, however, one-half of the members of the Senate and all of the members of the House of Representatives are to be elected at the general election on November 3, 1964. Provision must, therefore, be made in time so that these elections can be held. We note that the General Assembly

of the Commonwealth is presently in session. By adding the subject of reapportionment to the proclamation which called the present special session or by calling another special session for that purpose the Governor can make it possible for the General Assembly to enact valid reapportionment legislation in ample time to be effective for the forthcoming general election. We sincerely hope that such action will be taken. It is true, of course, that it will be too late for candidates for the Senate and House under such legislation to be nominated at the spring primary election on April 28th. But nominations of candidates, under these circumstances could still be made by party committee certificates and independent nomination papers under Section 993 of the Pennsylvania Election Code [12] up to September 21, 1964.

As we have said, we sincerely hope and expect that the Governor and the Legislature of Pennsylvania will do their duty in this regard by enacting promptly the necessary reapportionment laws. For this task is rightly theirs and it is much better in every way that they, and not this Court, should perform it. But we must recognize the possibility that they will not do so, in which event it will be our duty to take the necessary action to make possible the election of senators and representatives to the General Assembly at the 1964 general election under a valid apportionment of seats and thus to enable government in the Commonwealth to go on. Our judgment restraining the enforcement of the Apportionment Acts of January 9, 1964 will, therefore, direct the parties to consider and submit to the Court proposed forms of judgment designed to give complete relief, including the

[12] 25 P.S. (Pa.) § 2953.

formulation of senatorial and representative districts in accord with federal constitutional requirements, in case the General Assembly fails to take appropriate action. Such proposals will be submitted prior to June 1, 1964 on which day this Court will sit to consider the proposals submitted and to take such action as may be appropriate in the light of the situation then existing.

A judgment will be entered in accordance with this opinion.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED APRIL 9, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 8293

Ira Walton Drew et al.,
Plaintiffs

and

Marshall J. Seidman,
Intervening Plaintiff

vs.

William W. Scranton et al.,
Defendants

Civil Action No. 8338

Michael Johnson et al.,
Plaintiffs

vs.

George I. Bloom,
Defendant

Present: Maris, Circuit Judge, and Sheridan and Nealon, District Judges

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court having fully considered the evidence presented by the parties and certain United States census reports and other data of which it has taken judicial notice and the briefs and argument of counsel in the above entitled consolidated cases, makes the following:

FINDINGS OF FACT

1. Plaintiffs, in Civil Action No. 8293, Ira Walton Drew, J. Claude Bowen, John B. McCrea, Irving Kaufman and Jean McCoskey, are taxpayers and qualified voters residing respectively within the Counties of Philadelphia, Bucks, Montgomery, Delaware and Luzerne in the Commonwealth of Pennsylvania.

2. The intervening plaintiff in Civil Action No. 8293, Marshall J. Seidman, is a citizen, duly qualified elector and taxpayer of the Commonwealth of Pennsylvania, residing in Montgomery County.

3. Plaintiffs in Civil Action No. 8338, Michael Johnson, Harry Block, Henry P. Groton, Eugene Joseph Considine, and Frederick Blair Hughes, are citizens, duly qualified electors, registered voters and taxpayers of the Commonwealth of Pennsylvania, residing respectively within the Counties of Montgomery, Philadelphia, Delaware, Luzerne and Clearfield.

4. Defendant, William W. Scranton, is the Governor of the Commonwealth of Pennsylvania, and is vested by

the Constitution of the Commonwealth of Pennsylvania with over-all responsibility for the execution and enforcement of the laws of the Commonwealth.

5. Defendant, George L. Bloom, is the Secretary of the Commonwealth of Pennsylvania, and is vested by the provisions of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended, 25 Purdon's Statutes §§ 2600, et seq., with certain principal functions leading to the nomination, election and certification of the several candidates for membership in the Senate and House of Representatives of the Commonwealth of Pennsylvania.

6. Defendant, Walter E. Alessandroni, is the Attorney General of the Commonwealth of Pennsylvania, and is vested with the responsibility, under the supervision of the Governor, for the enforcement and implementation of the Pennsylvania Constitution and all laws enacted by the state legislature.

7. Defendants, Raymond P. Shafer, M. Harvey Taylor and W. Stuart Helm, are respectively President and President Pro Tempore of the Senate and Speaker of the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania and, as the presiding officers of their respective Houses of the General Assembly, they are vested by Article III, § 9 of the Pennsylvania Constitution with the responsibility of signing all bills passed by the General Assembly and possess all other duties and responsibilities inherent in the office of presiding officer of a legislature.

8. In a special session of the legislature which met from November 12, 1963, to December 14, 1963, the General Assembly of the Commonwealth of Pennsylvania re-

apportioned the senatorial and representative districts to conform with the population of the Commonwealth, as determined by the 1960 census.

9. The senatorial districts in the Commonwealth were reapportioned by the Act of January 9, 1964, No. 2, (hereinafter called the "Senatorial Apportionment Act"), which was passed by the legislature on December 9, 1963, and approved by the defendant, Governor William W. Scranton, on January 9, 1964.

10. The representative districts in the Commonwealth were reapportioned by the Act of January 9, 1964, No. 1, (hereinafter called the "Representative Apportionment Act"), which was passed by the legislature on December 9, 1963, and approved by the defendant, Governor William W. Scranton, on January 9, 1964.

11. These acts reapportioned the Senate and House of Representatives in accordance with the provisions in Article II, §§ 16 and 17 of the Pennsylvania Constitution.

12. Article II, § 16 of the Pennsylvania Constitution provides for apportionment of the Senate as follows:

(a) Fifty senatorial districts of compact and contiguous territory are to be created, as nearly equal in population as possible and each district is entitled to elect one senator.

(b) The population of the State at the most recent census is divided by the number 50. The quotient obtained constitutes a "ratio" of population which is the unit used in apportioning senators among the counties.

(c) Each county containing one or more ratios of population is entitled to elect one senator for each ratio

and to elect an additional senator for a surplus of population exceeding three-fifths of a ratio.

(d) No matter how great its population may come to be, no county may be given separate representation exceeding one-sixth of the total number of senators.

(e) No county may form a separate district unless it contains four-fifths of a ratio except where the adjoining counties are each entitled to one or more senators in which event such county may be assigned a senator if it contains less than four-fifths but more than one-half a ratio.

(f) No county may be divided unless entitled to two or more senators.

(g) No ward, borough or township may be divided to form a district.

13. The population of Pennsylvania according to the 1960 census is 11,319,366, and the senatorial ratio based thereon is 226,387.

14. The Senatorial Apportionment Act reapportions the Senate as follows:

District No.	*Counties*	*1960 Population*
1	Philadelphia (part)	260,767
2	Philadelphia (part)	255,869
3	Philadelphia (part)	251,415
4	Philadelphia (part)	241,032
5	Philadelphia (part)	236,148
6	Philadelphia (part)	243,667
7	Philadelphia (part)	266,242
8	Philadelphia (part)	248,372

9	Delaware (part)	255,888
10	Bucks	308,567
11	Berks	275,414
12	Montgomery (part)	262,794
13	Lancaster	278,359
14	Carbon, Monroe, Pike, Wayne	129,851
15	Dauphin	220,255
16	Lehigh	227,536
17	Montgomery (part)	253,888
18	Northampton	201,412
19	Chester	210,608
20	Luzerne	346,972
21	Butler, Lawrence	227,604
22	Lackawanna	234,531
23	Wyoming, Susquehanna, Bradford, Tioga, Sullivan	147,740
24	Lycoming, Montour, Columbia	179,586
25	Clinton, Cameron, Potter, McKean, Warren	161,787
26	Delaware (part)	297,266
27	Union, Snyder, Northumberland	155,706
28	York	238,336
29	Schuylkill, Lebanon	263,880
30	Blair, Huntingdon	176,727
31	Mifflin, Juniata, Perry, Cumberland	211,620
32	Greene, Fayette	208,764
33	Franklin, Adams	140,078
34	Clearfield, Centre	160,114
35	Cambria	203,283
36	Fulton, Bedford, Somerset	130,498
37	Allegheny (part)	235,125
38	Allegheny (part)	233,003

39	Westmoreland	352,629
40	Allegheny (part)	241,6[illegible]
41	Jefferson, Indiana, Armstrong	201,682
42	Allegheny (part)	226,269
43	Allegheny (part)	237,367
44	Allegheny (part)	233,036
45	Allegheny (part)	222,104
46	Washington	217,271
47	Beaver	206,948
48	Venango, Clarion, Forest, Elk	144,516
49	Erie	250,682
50	Crawford, Mercer	205,475
		11,319,366

15. The Senatorial Apportionment Act creates senatoria districts which contain widely varying numbers of people; certain of the counties in the Commonwealth are under-represented and others are over-represented.

16. Under the Senatorial Apportionment Act, Bucks County (10th District) with a population of 308,567; Luzerne County (20th District) with a population of 346,972, and Westmoreland County (39th District) with a population of 352,629, will each be represented by one senator, as compared with the counties comprising the 14th District (Carbon, Monroe, Pike and Wayne) with a population of 129,851; the 36th District (Somerset, Bedford and Fulton) with a population of 130,498; the 33rd District (Franklin and Adams) with a population of 140,078; the 48th District (Elk, Forest, Clarion and Venango) with a population of 144,516, and the 23rd District (Tioga, Bradford, Susquehanna, Sullivan and

Wyoming) with a population of 147,740 respectively, each of which also will be represented by one senator.

17. In some instances, under the Senatorial Apportionment Act, a senator elected from one senatorial district will represent in excess of two and one-half times the number of persons who will be represented by a senator elected from another senatorial district.

18. Certain over-represented, sparsely populated or rural districts adjoin under-represented, densely populated or urban districts; for example, the 14th and 23rd Districts adjoin the 20th District, and the 36th District adjoins the 39th District.

19. The seven most populous counties (Philadelphia, Allegheny, Delaware, Montgomery, Westmoreland, Luzerne and Bucks), with a combined population of 5,709,103, or 50.4% of the total population of the State, will be represented by only 22 senators, or 44% of the total number of senators.

20. The 58 least populated counties with a combined population of 5,056,490, or 44.6% of the total population, can elect 26 senators, or a majority of the Senate.

21. Philadelphia, with a population of 2,002,512, has 8.85 senatorial ratios, and is assigned only 8 senators, as compared with the counties in the 14th, 23rd, 25th, 27th, 33rd, 34th, 36th and 48th senatorial districts, having a combined population of 1,170,290 or 5.17 ratios, which also are assigned 8 senators.

22. Under the previous apportionment act, Luzerne County was assigned two senators. With its current population of 346,972, this amounted to one senator for

each 173,486 people. Under the Senatorial Apportionment Act, Luzerne has lost one of its senators, and now has one senator for 346,972 people. The 24th District, which adjoins Luzerne County, formerly consisted of Lycoming, Sullivan, Columbia and Montour Counties and now has a total population of 185,837. Under the Senatorial Apportionment Act, Sullivan County was eliminated, but the 24th District with a population of only 179,586, still retains its one senator for this population.

23. The counties in the senatorial districts which are under-represented are primarily the densely populated or urban and suburban counties.

24. The counties in the senatorial districts which are over-represented are primarily the sparsely populated or rural counties.

25. The Senatorial Apportionment Act apportions the Senate in a manner which largely discriminates against the citizens residing in the densely populated or urban and suburban counties of the State in favor of the citizens residing in the sparsely populated or rural counties.

26. There is no rational basis for the disparities and discrimination under the Senatorial Apportionment Act.

27. The disparities and discrimination resulting from the Senatorial Apportionment Act are compelled by Article II, § 16 of certain provisions of the Constitution of Pennsylvania to the extent that they are mandatory.

28. The Senatorial Apportionment Act apportions the Senate in a manner which is invidiously discriminatory.

29. The disparities and discrimination in senatorial representation result in part from the provision of Article II, § 16 of the Pennsylvania Constitution which prohibits counties which are entitled to at least one senator from being represented by an additional senator unless the surplus population over a full ratio exceeds three-fifths of a ratio.

30. The disparities and discrimination in senatorial representation result in part from the provision of Article II, § 16 of the Pennsylvania Constitution which prohibits any county or city from having in excess of one-sixth (or 8) of the total number of senators (50).

31. The disparities in senatorial representation result to some extent from the provision of Article II, § 16 of the Pennsylvania Constitution which prevents the division of a county for the creation of a senatorial district unless that county is entitled to two or more senators.

32. There is no rational basis for the provisions of Article II, § 16 of the Pennsylvania Constitution referred to in findings 29 and 30.

33. The provisions of Article II, § 16 referred to in findings 29 and 30, to the extent that they are mandatory, compel an apportionment of the Senate which is invidiously discriminatory.

34. Article II, § 17 of the Pennsylvania Constitution does not provide for a fixed number of representatives or representative districts in the House of Representatives. The membership of the House of Representatives and the apportionment of the representatives among the counties are determined as follows on the basis of a representative

ratio which is ascertained by dividing the population of the State by 200:

(a) Each county is assigned at least one representative, regardless of its population.

(b) Each county having a population containing less than five ratios is assigned one representative for each whole ratio and an additional representative for a remaining fraction of a ratio greater than one-half.

(c) Each county having a population containing five ratios or more is assigned one representative for each whole ratio but none for an additional fraction of a ratio.

(d) The counties and cities within a county may be subdivided into representative districts. Every city containing a population equal to a ratio elects separately its own proportion of the total number of representatives allocated to a particular county. Every county with a population exceeding 100,000 is to be subdivided into districts of compact and contiguous territory. Each district elects its proportionate number of representatives, but no district may elect more than four.

35. The representative ratio based on the population of Pennsylvania as determined by the 1960 census is 56,597. One-half a ratio is 28,298.

36. In accordance with the formula contained in Article II, §17 of the Pennsylvania Constitution, the Representative Apportionment Act allocated 209 members to the House of Representatives.

37. The Representative Apportionment Act creates representative districts and apportions representatives among the counties, as follows:

County	*No. of Districts*	*No. of Representatives*	*1960 Population*
Philadelphia	26	35	2,002,512
Adams	1	1	51,906
Allegheny	16	28	1,628,587
Armstrong	1	1	79,524
Beaver	2	4	206,948
Bedford	1	1	42,451
Berks	5	5	275,414
Blair	2	2	137,270
Bradford	1	1	54,925
Bucks	2	5	308,567
Butler	2	2	114,639
Cambria	3	4	203,283
Cameron	1	1	7,586
Carbon	1	1	52,889
Centre	1	1	78,580
Chester	2	4	210,608
Clarion	1	1	37,408
Clearfield	1	1	81,534
Clinton	1	1	37,619
Columbia	1	1	53,489
Crawford	1	1	77,956
Cumberland	2	2	124,816
Dauphin	2	4	220,255
Delaware	3	9	553,154
Elk	1	1	37,328
Erie	3	4	250,682
Fayette	2	3	169,340

County	*No. of Districts*	*No. of Representatives*	*1960 Population*
Forest	1	1	4,485
Franklin	2	2	88,172
Fulton	1	1	10,597
Greene	1	1	39,424
Huntingdon	1	1	39,457
Indiana	1	1	75,366
Jefferson	1	1	46,792
Juniata	1	1	15,874
Lackawanna	4	4	234,531
Lancaster	2	5	278,359
Lawrence	2	2	112,965
Lebanon	1	2	90,853
Lehigh	2	4	227,536
Luzerne	6	6	346,972
Lycoming	2	2	109,367
McKean	1	1	54,517
Mercer	2	2	127,519
Mifflin	1	1	44,348
Monroe	1	1	39,567
Montgomery	4	9	516,682
Montour	1	1	16,730
Northampton	3	4	201,412
Northumberland	2	2	104,138
Perry	1	1	26,582
Pike	1	1	9,158
Potter	1	1	16,483
Schuylkill	2	3	173,027
Snyder	1	1	25,922
Somerset	1	1	77,450
Sullivan	1	1	6,251

County	*No. of Districts*	*No. of Representatives*	*1960 Population*
Susquehanna	1	1	33,137
Tioga	1	1	36,614
Union	1	1	25,646
Venango	1	1	65,295
Warren	1	1	45,582
Washington	2	4	217,271
Wayne	1	1	28,237
Westmoreland	6	6	352,629
Wyoming	1	1	16,813
York	4	4	238,336
	155	209	11,319,366

38. Under the Representative Apportionment Act, six counties, namely, Clearfield with a population of 81,534, Armstrong with a population of 79,524, Centre with a population of 78,580, Crawford with a population of 77,956, Somerset with a population of 77,450, and Indiana with a population of 75,366, are assigned only one representative each, or a total of six representatives for an aggregate population of 470,410. Six other counties, namely, Forest with a population of 4,485, Sullivan with a population of 6,251, Cameron with a population of 7,586, Pike with a population of 9,158, Fulton with a population of 10,597, and Juniata with a population of 15,874, are also assigned one representative each, or a total of six representatives for an aggregate population of 53,951.

39. Under the Representative Apportionment Act there are counties in which legislators represent as many

as 8 to 18 times the number of persons represented by legislators from other counties.

40. The counties which are under-represented in the House of Representatives are primarily the densely populated or urban and suburban counties.

41. The counties which are over-represented in the House of Representatives are primarily the sparsely populated or rural counties, although certain rural counties are under-represented.

42. Certain over-represented rural counties adjoin under-represented counties; for example, Forest with one representative per 4,485 adjoins Venango with one representative per 65,295; Sullivan with one representative per 6,251 adjoins Lycoming with one representative per 54,684; Cameron with one representative per 7,586 adjoins Clearfield with one representative per 81,534; Montour with one representative per 16,730 adjoins Columbia with one representative per 53,489; and Wyoming with one representative per 16,813 adjoins Lackawanna with one representative per 58,633.

43. Under the Representative Apportionment Act the seven most populous counties (Philadelphia, Allegheny, Delaware, Montgomery, Westmoreland, Luzerne and Bucks) having a combined population of 5,709,103 or 50.4% of the total population of the State, are represented by only 98 representatives, or 46.9% of the total of 209 representatives.

44. Under the Representative Apportionment Act the remaining 60 counties having a combined population of 5,610,263, or 49.6% of the total population of the State, elect 111 representatives, or 53.1% of the total number.

45. When the vote is considered by subdivisions within the counties, districts having a combined population of 4,887,887, or 43.2% of the total population of the State, elect 105 representatives, a majority of the House of Representatives.

46. Allegheny County with a population of 1,628,587, equal to 28.78 representative ratios, is assigned only 28 representatives; Delaware County with a population of 553,154, equal to 9.77 representative ratios, is assigned only 9 representatives. Neither of these counties receives an additional representative for its .78 and .77 of a ratio, respectively. On the other hand, six counties: Beaver with a population of 206,948, equal to 3.66 representative ratios; Cambria with a population of 203,283, equal to 3.59 representative ratios; Chester with a population of 210,608, equal to 3.72 representative ratios; Franklin with a population of 88,172, equal to 1.56 representative ratios; Lebanon with a population of 90,853, equal to 1.61 representative ratios; and Northampton with a population of 201,412, equal to 3.56 representative ratios, are assigned additional representatives for their fractions of a representative ratio, all of which are less than the fractions in Allegheny and Delaware Counties.

47. The five least populated counties (Forest, Sullivan, Cameron, Pike and Fulton) having a combined population of 38,077, or only .67 of a single representative ratio, are assigned a total of five representatives.

48. Thirteen counties in the Commonwealth each have a population of less than one-half of a representative ratio. They are assigned a total of 13 representatives.

49. The Representative Apportionment Act apportions the House of Representatives in a manner which substantially discriminates against the citizens residing in the densely populated or urban and suburban counties of the State in favor of the citizens residing in the sparsely populated or rural counties.

50. There is no rational basis for the disparities and discrimination under the Representative Apportionment Act.

51. The Representative Apportionment Act apportions the House of Representatives in a manner which is invidiously discriminatory.

52. The disparities and discrimination resulting from the Representative Apportionment Act are compelled by certain provisions of Article II, §17 of the Pennsylvania Constitution to the extent that they are mandatory.

53. The disparities and discrimination in the Representative Apportionment Act result in part from the provision of Article II, §17 of the Pennsylvania Constitution, which requires that every county be assigned at least one representative regardless of its population.

54. The disparities and discrimination in the Representative Apportionment Act result in part from the provision of Article II, §17 of the Pennsylvania Constitution, which prevents any county with five or more full representative ratios from obtaining an additional representative without an additional full ratio, while permitting counties with fewer than five full representative ratios to be assigned an additional representative when the surplus exceeds one-half of a ratio.

55. There is no rational basis for the discriminatory provisions of Article II, §17 of the Pennsylvania Constitution referred to in findings 53 and 54.

56. The provisions of Article II, §17 referred to in findings 53 and 54, to the extent that they are mandatory, compel an apportionment of the House of Representatives which is invidiously discriminatory.

57. The Representative Apportionment Act creates 116 single-member representative districts, 37 in the 37 counties to which only one member each is allotted, and 79 in the counties to which two or more members are allotted. In the latter counties 29 two-member districts, 5 three-member districts, and 5 four-member districts are also created.

58. These varying districts follow no logical or consistent pattern. In all the counties to which two representatives are allotted, single-member districts are set up, except in Lebanon which constitutes a two-member district. Likewise in the cases of Lackawanna and York, entitled to four representatives; Berks, entitled to five, and Luzerne and Westmoreland, entitled to six, single-member districts are uniformly provided. In the other larger counties districts are created as follows:

County	*District*
Philadelphia	18 single-member districts
	7 two-member districts
	1 three-member district
Allegheny	8 single-member districts
	5 two-member districts
	2 three-member districts
	1 four-member district

County	*District*
Delaware	1 single-member district
	2 four-member districts
Montgomery	3 two-member districts
	1 three-member district
Bucks	1 single-member district
	1 four-member district
Lancaster	1 single-member district
	1 four-member district
Erie	2 single-member districts
	1 two-member district
Lehigh	2 two-member districts
Dauphin	1 single-member district
	1 three-member district
Washington	2 two-member districts
Chester	2 two-member districts
Beaver	2 two-member districts
Cambria	2 single-member districts
	1 two-member district
Northampton	2 single-member districts
	1 two-member district
Schuylkill	1 single-member district
	1 two-member district
Fayette	1 single-member district
	1 two-member district

59. The multiple-member districts operate to give the voters therein voting power and influence in the legislative process which is greater (in proportion to the number of representatives for whom they may vote and who will represent them) than that which is enjoyed by the voters in the single-member districts.

60. The multiple-member districts created by the Representative Apportionment Act discriminate against political minorities.

61. There is no rational basis for the existence of multiple-member districts in Pennsylvania.

62. For no rational reason Allegheny County consists of eight single-member districts, five two-member districts, two three-member districts, and one four-member district.

63. For no rational reason three adjoining counties with common geographic and socio-economic conditions and a largely homogeneous population are subdivided in a different manner. Berks County is subdivided into five single-member districts. Lancaster County is divided into one single-member and one four-member districts. York County is subdivided into four single-member districts.

64. For no rational reason Bucks County consists of one single-member district and one four-member district. Five single-member districts could have been created easily.

65. For no rational reason Butler County consists of two single-member districts and one two-member district.

66. For no rational reason Cambria County consists of two single-member districts and one two-member district.

67. For no rational reason Dauphin County consists of one single-member district and one three-member district.

68. For no rational reason Delaware County consists of one single-member district and two four-member districts.

69. For no rational reason the City of Erie is split into two single-member districts but the outlying area of Erie County consists of a two-member district.

70. For no rational reason Fayette County consists of a single-member and a two-member district.

71. For no rational reason Franklin County consists of a single-member and a two-member district.

72. For no rational reason Lebanon County consists of one two-member district.

73. For no rational reason Lehigh County is divided into two two-member districts. Unlike Erie, Scranton and Reading, the City of Allentown with a population of 108,347 was not divided into single member districts.

74. For no rational reason Montgomery County consists of three two-member districts and one three-member district.

75. For no rational reason Northampton County consists of two single-member districts and one two-member district.

76. For no rational reason the City and County of Philadelphia consists of 18 single-member districts, seven two-member districts, and one three-member district.

77. For no rational reason Schuylkill County consists of one single-member and one two-member districts.

78. For no rational reason Washington County consists of two two-member distric

79. No rational reason has been shown for the foregoing allocation of multiple-member districts as provided in the Representative Apportionment Act.

80. Generally, the counties which are over-represented in the House of Representatives are allocated to senatorial districts which similarly are over-represented in the Senate.

81. These over-represented counties are, generally speaking, basically rural in character, sparsely populated, with decreasing or stabilized populations.

82. Eleven of the 67 counties are under-represented in both houses of the Pennsylvania General Assembly.

83. Generally speaking these under-represented counties are basically urban and suburban in character, densely populated (seven of them with increasing populations) and contain the larger cities of the State.

84. Delaware County with a population of 553,154, equivalent almost to two and one-half ratios, will have only one Senator until January of 1967, whereas the 26th Senatorial District with a population of 79,221, equivalent to slightly more than one-third of a ratio, and the 48th Senatorial District with a population of 65,295, equivalent to less than one-third of a ratio, each will have a Senator during that period.

85. The Senatorial and Representative Apportionment Acts together create an apportionment scheme for the General Assembly of Pennsylvania which is discriminatory in favor of the sparsely populated or rural counties of the State, thereby debasing the votes of the plaintiffs and others similarly situated, who reside in the more

densely populated or urban and suburban counties of the State.

86. Some of the disparities in the representation afforded the citizens of the several counties under both Apportionment Acts are compelled by the provisions of Article II, §§16 and 17 of the Pennsylvania Constitution, which provide that counties shall be the units for the determination of representation in the General Assembly and which require that each county shall be separately represented in the House of Representatives.

87. The disparities resulting from the constitutional requirement that counties having less than one-half a representative ratio of population shall be separately represented by a member of the House of Representatives involve discrimination in favor of the citizens of those counties and against the citizens of all the more populous counties of the State.

88. The disparities resulting from the constitutional provisions that counties shall be the units for the determination of representation in the General Assembly, to the extent that they do not exceed one-half the senatorial or representative ratio, as the case may be, are the random results of the population figures for the counties as determined by the 1960 United States census and do not involve a pattern of predetermined discrimination in favor of or against any group or class of citizens of the State.

Upon consideration of the foregoing facts the Court reaches the following

CONCLUSIONS OF LAW

1. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §1343(3) and 42 U.S.C. §1983.

2. Article II, §16, of the Pennsylvania Constitution compels an apportionment of the Senate of the Pennsylvania General Assembly which is invidiously discriminatory and which denies plaintiffs and others similarly situated of their right to the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution. Article II, §16, of the Pennsylvania Constitution cannot bar action to provide an apportionment plan for the Senate which affords plaintiffs and others similarly situated the equal protection of the laws under the Fourteenth Amendment to the Federal Constitution.

3. Article II, §17, of the Pennsylvania Constitution compels an apportionment of the House of Representatives of the Pennsylvania General Assembly which is invidiously discriminatory and which denies plaintiffs and others similarly situated of their right to the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution. Article II, §17, of the Pennsylvania Constitution cannot bar action to provide an apportionment plan for the House of Representatives which affords plaintiffs and others similarly situated the equal protection of the laws under the Fourteenth Amendment to the Federal Constitution.

4. The Senatorial Apportionment Act of January 9, 1964, No. 2, provides for an apportionment of the Senate

of the Pennsylvania General Assembly which debases the voting rights of plaintiffs and others similarly situated, which is invidiously discriminatory and which denies plaintiffs and others similarly situated of their right to the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

5. The Representative Apportionment Act of January 9, 1964, No. 1, provides for an apportionment of the House of Representatives of the Pennsylvania General Assembly which debases the voting rights of plaintiffs and others similarly situated, which is invidiously discriminatory and which denies plaintiffs and others similarly situated of their right to the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

6. An election held pursuant to the Senatorial and Representative Apportionment Acts of January 9, 1964, would be invalid and unlawful under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

7. Plaintiffs and others similarly situated are irreparably harmed by the apportionment of the Pennsylvania General Assembly in accordance with the apportionment formulas set forth in Article II, §§16 and 17, of the Pennsylvania Constitution and the Senatorial and Representative Apportionment Acts of January 9, 1964, implementing said constitutional provisions.

8. Plaintiffs are entitled to an injunction permanently restraining the enforcement of the Senatorial and Representative Apportionment Acts of January 9, 1964, and to such further relief as may be necessary to assure to them and all other citizens of the Commonwealth the right and

opportunity at the general election of 1964 to elect Senators and Representatives to the General Assembly under an apportionment which will not be invidiously discriminatory against them or any other citizens of the Commonwealth.

Albert B. Maris
Circuit Judge
Michael H. Sheridan
District Judge
William J. Nealon
District Judge

IV.

JUDGMENT DATED APRIL 9, 1964

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 8293

Ira Walton Drew et al.,

Plaintiffs

and

Marshall J. Seidman,

Intervening Plaintiff

v.

William W. Scranton et al.,

Defendants

Civil Action No. 8338

Michael Johnson et al.,

Plaintiffs

v.

George I. Bloom,

Defendant

Present: MARIS, Circuit Judge, SHERIDAN and NEALON, District Judges

JUDGMENT

These consolidated actions came on for hearing before the Court and the issues having been duly heard and the Court having filed its findings of fact, conclusions of law and opinion, concluding that the Acts of the Commonwealth of Pennsylvania approved January 9, 1964, Nos. 1 and 2, deprive the plaintiffs and other voters of the Commonwealth similarly situated of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

It Is Ordered and Adjudged

1. That the defendants and each of them are enjoined from enforcing the said Acts of January 9, 1964, Nos. 1 and 2, or conducting or performing any duties under the Pennsylvania Election Code in connection with any primary or general election of senators and representatives pursuant thereto.

2. That the Court retains jurisdiction of these consolidated actions until such time as a valid reapportionment of the senators and representatives in the General Assembly of the Commonwealth has been effected by Acts of the General Assembly or, in default thereof, by decree of this Court or in any other lawful manner.

3. That the Court will reconvene at Philadelphia on June 1, 1964, at 10 o'clock A.M., to consider any further relief to which the plaintiffs may then be entitled in the light of the action the General Assembly may have taken

in the premises in the interim or the lack of such action, and of all other pertinent circumstances.

By the Court:
Albert B. Maris
Circuit Judge
Michael H. Sheridan
District Judge
William J. Nealon
District Judge

April 9, 1964

APPENDIX B

I.

CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

. . . . . .

ARTICLE II

. . . . . .

Senatorial District Apportionment

Section 16. The State shall be divided into fifty senatorial districts of compact and continuous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty.

Representative District Apportionment

Section 17. The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two hundred. Every county containing less than five full ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives alloted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants, shall be divided into districts of compact and continuous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

Time of Apportionment

Section 18. The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

* * * * * * * * *

II.

CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

. . . . . .

ARTICLE VII

Suffrage and Election

Qualification of Electors

Section 1. Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State one year (or, having previously been a qualified elector or native born citizen of the State, he or she shall have removed therefrom and returned, then six months) immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least sixty days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within sixty days preceding the election.

. . . . . .

III.

PENNSYLVANIA REPRESENTATIVE APPORTIONMENT ACT OF JANUARY 9, 1964, NO. 1

ACT NO. 1

SENATE REPRINT

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL NO. 1

Special Session of 1963

Introduced by Messrs. Weidner and Bower, November 12, 1963

As Amended on Third Reading in Senate, December 9, 1963

AN ACT

To fix the number of Representatives in the General Assembly of the State; and to apportion the State into representative districts, as provided by the Constitution.

THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA HEREBY ENACTS AS FOLLOWS:

Section 1. That until the next decennial United States census and the apportionment be made thereon by law, the House of Representatives shall consist of two hundred nine members, and shall be apportioned as follows, namely:

The City of Philadelphia shall elect thirty-five members and the said city shall be divided into twenty-six districts, as follows:

The fortieth ward shall constitute the first district, and elect one member.

The forty-sixth, fifty-first and sixtieth wards shall constitute the second district, and elect two members.

The thirty-fourth ward shall constitute the third district, and elect one member.

The fifty-second ward shall constitute the fourth district, and elect one member.

The twenty-fourth, twenty-seventh and forty-fourth wards shall constitute the fifth district, and elect two members.

The thirty-ninth ward shall constitute the sixth district, and elect one member.

The first, twenty-sixth and forty-eighth wards shall constitute the seventh district, and elect two members.

The second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth wards shall constitute the eighth district, and elect one member.

The thirtieth and thirty-sixth wards shall constitute the ninth district, and elect one member.

The thirteenth, fourteenth and fifteenth wards shall constitute the tenth district, and elect one member.

The twenty-ninth and forty-seventh wards shall constitute the eleventh district, and elect one member.

The twentieth, thirty-seventh, thirty-eighth and forty-third wards shall constitute the twelfth district, and elect three members.

The thirty-second ward shall constitute the thirteenth district, and elect one member.

The twenty-eighth ward shall constitute the fourteenth district, and elect one member.

The forty-second ward shall constitute the fifteenth district, and elect one member.

The eleventh, twelfth, sixteenth, seventeenth and nineteenth wards shall constitute the sixteenth district, and elect one member.

The eighteenth, twenty-fifth, thirty-first and forty-fifth wards shall constitute the seventeenth district, and elect two members.

The thirty-third ward shall constitute the eighteenth district, and elect one member.

The forty-first ward shall constitute the nineteenth district, and elect one member.

The fifty-third and fifty-fourth wards shall constitute the twentieth district, and elect one member.

The fifty-sixth, fifty-seventh and fifty-eighth wards shall constitute the twenty-first district, and elect two members.

The twenty-first ward shall constitute the twenty-second district, and elect one member.

The twenty-second ward shall constitute the twenty-third district, and elect one member.

The fifty-ninth ward shall constitute the twenty-fourth district, and elect one member.

The forty-ninth and fiftieth wards shall constitute the twenty-fifth district, and elect two members.

The twenty-third, thirty-fifth and fifty-fifth wards shall constitute the twenty-sixth district, and elect two members.

The County of Adams shall elect one member.

The County of Allegheny shall elect twenty-eight members and shall be divided into sixteen districts as follows:

The first, second, third, sixth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth and twenty-seventh wards of the City of Pittsburgh shall constitute the first district, and elect two members.

The twelfth and thirteenth wards of the City of Pittsburgh shall constitute the second district, and elect one member.

The sixteenth, seventeenth, AND thirtieth ~~and thirty-first~~ wards of the City of Pittsburgh and the borough of Mount Oliver shall constitute the third district, and elect one member.

The sixth, seventh, eighth, ninth and twentieth precincts of the fourth ward, and the seventh and eleventh wards of the City of Pittsburgh shall constitute the fourth district, and elect one member.

The fourteenth ward of the City of Pittsburgh shall constitute the fifth district, and elect one member.

The eighteenth, nineteenth, twentieth, twenty-eighth, twenty-ninth and thirty-second wards of the City of Pittsburgh shall constitute the sixth district, and elect two members.

The first, second, third, fourth, fifth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth precincts of the fourth ward, and the fifth, eighth, ninth, tenth ~~and~~ fifteenth AND THIRTY-FIRST wards of the City of Pittsburgh shall constitute the seventh district, and elect two members.

The boroughs of East McKeesport, Elizabeth, Liberty, Lincoln, White Oak and that portion of the borough of Trafford in Allegheny County and the townships of Elizabeth, Forward, North Versailles and South Versailles shall constitute the eighth district and elect one member.

The boroughs of Baldwin, Bethel, Brentwood, Jefferson, Pleasant Hills, West Elizabeth and Whitehall, and the townships of Snowden and Upper St. Clair shall constitute the ninth district and elect two members.

The boroughs of Coraopolis, McKees Rocks and the townships of Crescent, Kennedy, Moon, Neville, Robinson and Stowe shall constitute the tenth district and elect one member.

The Cities of Clairton and Duquesne and the boroughs of Braddock, Chalfant, Dravosburg, Homestead, Munhall, North Braddock, Rankin, West Homestead, West Mifflin and Whitaker shall constitute the eleventh district and elect two members.

The City of McKeesport and the boroughs of Glassport, Port Vue and Versailles shall constitute the twelfth district and elect one member.

The boroughs of Cheswick, Monroeville, Pitcairn, Plum, Springdale, Wall and Wilmerding and the townships of East Deer, Harmar and Springdale shall constitute the thirteenth district, and elect one member.

The boroughs of Aspinwall, Avalon, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Bradford Woods, Edgeworth, Emsworth, Etna, Fox Chapel, Glenfield, Haysville, Leetsdale, Millvale, Osborne, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Tarentum and West View and the townships of Aleppo, Fawn, Franklin, Frazer, Hampton, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, Ohio, O'Hara, Pine, Reserve, Richland, Ross, Sewickley, Shaler and West Deer shall constitute the fourteenth district, and elect four members.

The boroughs of Bridgeville, Carnegie, Castle Shannon, Crafton, Dormont, Green Tree, Heidelberg, Ingram, Oakdale, Rosslyn Farms, Thornburg, and that portion of the borough of McDonald in Allegheny County and the townships of Baldwin, Collier, Findlay, Mount Lebanon, North Fayette, Scott, and South Fayette shall constitute the fifteenth district and elect three members.

The boroughs of Braddock Hills, Churchill, East Pittsburgh, Edgewood, Forest Hills, Oakmont, Swissvale, Turtle Creek, Verona and Wilkinsburg and the townships of Penn Hills, and Wilkins shall constitute the sixteenth district and elect three members.

The County of Armstrong shall elect one member.

The County of Beaver shall elect four members and shall be divided into two districts as follows:

The boroughs of Aliquippa, Ambridge, Baden, Conway, East Rochester, Eastvale, Economy, Freedom, New

Brighton, Rochester and that portion of the borough of Ellwood City lying within the County of Beaver and the townships of Daugherty, Franklin, Harmony, Marion, New Sewickley, North Sewickley, Pulaski and Rochester shall constitute the first district and elect two members.

The residue of the County of Beaver not included in the first district shall constitute the second district and elect two members.

The County of Bedford shall elect one member.

The County of Berks shall elect five members and shall be divided into five districts as follows:

The seventh, eleventh, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, and nineteenth wards of the City of Reading shall constitute the first district and elect one member.

The first, second, third, fourth, fifth, sixth, eighth, ninth, tenth, sixteenth and eighteenth wards of the City of Reading shall constitute the fifth district and elect one member.

The boroughs of Birdsboro, Mohnton, Mount Penn, Shillington, West Reading, Wyomissing, Kenhorst, St. Lawrence and that portion of the borough of Adamstown lying within the County of Berks and the townships of Amity, Brecknock, Caernarvon, Cumru, Exeter, Lower Alsace, Robeson and Union shall constitute the second district and elect one member.

The boroughs of Bernville, Centerport, Hamburg, Lenhartsville, Robesonia, Shoemakersville, Sinking Spring, Strausstown, Wernersville, West Lawn, Leesport, Womelsdorf and Wyomissing Hills and the townships of Albany,

Bern, Bethel, Centre, Greenwich, Heidelberg, Jefferson, Lower Heidelberg, Marion, North Heidelberg, Ontelaunee, Penn, Perry, South Heidelberg, Spring, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor shall constitute the third district and elect one member.

The residue of the County of Berks not included in the first, second, third or fifth districts shall constitute the fourth district and elect one member.

The County of Blair shall elect two members and shall be divided into two districts as follows:

The City of Altoona shall constitute the first district and elect one member.

The residue of the County of Blair, not included in the first district shall constitute the second district and elect one member.

The County of Bradford shall elect one member.

The County of Bucks shall elect five members and shall be divided into two districts as follows:

The boroughs of Chalfont, Doylestown, Dublin, Hulmeville, Ivyland, Langhorne, Langhorne Manor, Morrisville, New Britain, New Hope, Newtown, Penndel, Perkasie, Quakertown, Richlandtown, Riegelsville, Sellersville, Silverdale, Trumbauersville, Tullytown, Yardley and that portion of the borough of Telford lying within Bucks County and the townships of Bedminster, Bensalem, Bridgeton, Buckingham, Doylestown, Durham, East Rockhill, Falls, Haycock, Hilltown, Lower Makefield, Lower Southampton, Middletown, Milford, New Britain, Newtown, Nockamixon, Northampton, Plumstead, Richland, Solebury, Springfield, Tinicum, Upper Makefield, Upper

Southampton, Warminster, Warrington, Warwick, West Rockhill and Wrightstown shall constitute the first district and elect four members.

The residue of the County of Bucks, not included in the first district, shall constitute the second district and elect one member.

The County of Butler shall elect two members and shall be divided into two districts as follows:

The City of Butler, the boroughs of Chicora, East Butler, Prospect, Portersville, West Liberty, Karns City, Fairview, West Sunbury, Petrolia, Bruin, Harrisville, Eau Claire, Cherry Valley, Slippery Rock, ~~and~~ the townships of Allegheny, Venango, Marion, Mercer, Slippery Rock, Cherry, Washington, Parker, Fairview, Concord, Clay, Brady, Worth, Muddycreek, Franklin, Center, Oakland, Donegal and Summit AND THE THIRD WARD OF THE TOWNSHIP OF BUTLER shall constitute the first district and elect one member.

The residue of the County of Butler, not included in the first district shall constitute the second district and elect one member.

The County of Cambria shall elect four members and shall be divided into three districts, as follows:

The City of Johnstown and the borough of Dale shall constitute the first district, and elect one member.

The boroughs of Brownstown, Cassendra, Daisytown, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Geistown, Lorian; Portage, Scalp Level, South Fork, Southmont, Summerhill, Westmont and Wilmore and the townships of Adams, Cambria, Conemaugh, Croyle, East

Taylor, Jackson, Lower Yoder, Middle Taylor, Portage, Richland, Stonycreek, Summerhill, Upper Yoder and West Taylor shall constitute the second district and elect two members.

The residue of the County of Cambria, not included in the first and second districts shall constitute the third district, and elect one member.

The County of Cameron shall elect one member.

The County of Carbon shall elect one member.

The County of Centre shall elect one member.

The County of Chester shall elect four members and shall be divided into two districts as follows:

The City of Coatesville, the boroughs of Atglen, Avondale, Elverson, Honey Brook, Kennett Square, Modena, Oxford, Parkesburg, South Coatesville, West Chester and West Grove and the townships of Birmingham, Caln, Elk, East Fallowfield, East Nottingham, East Bradford, East Brandywine, East Marlborough, Franklin, Highland, Honeybrook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, Penn, Pennsbury, Pocopson, Sadsbury, Upper Oxford Valley, West Bradford, West Brandywine, West Caln, West Fallowfield, West Marlborough, West Nottingham, West Nantmeal, West Sadsbury and Wallace shall constitute the first district and elect two members.

The residue of the County of Chester, not included in the first district, shall constitute the second district and elect two members.

The County of Clarion shall elect one member.

The County of Clearfield shall elect one member.

The County of Clinton shall elect one member.

The County of Columbia shall elect one member.

The County of Crawford shall elect one member.

The County of Cumberland shall elect two members and shall be divided into two districts as follows:

The boroughs of Camp Hill, Lemoyne, Mechanicsburg, Newburg, Newville, Shiremanstown, West Fairview and Wormleysburg and the townships of East Pennsboro, Hampden, Hopewell, Lower Frankford, Lower Mifflin, Middlesex, North Middleton, North Newton, Silver Spring, Upper Frankford, Upper Mifflin and West Pennsboro shall constitute the first district and elect one member.

The residue of the County of Cumberland not included in the first district shall constitute the second district and elect one member.

The County of Dauphin shall elect four members and shall be divided into two districts as follows:

The City of Harrisburg shall constitute the first district and elect one member.

The residue of the County of Dauphin not included in the first district shall constitute the second district and elect three members.

The County of Delaware shall elect nine members and shall be divided into three districts as follows:

The City of Chester shall constitute the first district and elect one member.

The boroughs of Aldan, Clifton Heights, Colwyn, Darby, East Lansdowne, Lansdowne, Millbourne and Yeadon and the townships of Hayerford, Marple, Newtown, Radnor and Upper Darby shall constitute the second district and elect four members.

The residue of the County of Delaware not included in the first and second districts shall constitute the third district and elect four members.

The County of Elk shall elect one member.

The County of Erie shall elect four members and shall be divided into three districts as follows:

The third, fourth and sixth wards and the eleventh and twelfth precincts of the fifth ward of the City of Erie shall constitute the first district and elect one member.

The first and second wards and all of the fifth ward, except the eleventh and twelfth precincts of the City of Erie shall constitute the second district and elect one member.

The residue of the County of Erie not included in the first and second districts shall constitute the third district and elect two members.

The County of Fayette shall elect three members and shall be divided into two districts as follows:

The boroughs of Fairchance, Markleysburg, Masontown, Ohiopyle, Point Marion and Smithfield and the townships of Bullskin, Georges, German, Henry Clay, Luzerne, Menallen, Nicholson, Saltlick, Stewart, Springfield, Springhill and Wharton shall constitute the first district and elect one member.

The residue of the County of Fayette not included in the first district shall constitute the second district and elect two members.

The County of Forest shall elect one member.

The County of Franklin shall elect two members and shall be divided into two districts as follows:

The boroughs of Chambersburg, Orrstown and that portion of the borough of Shippensburg lying within the County of Franklin and the townships of Fannett, Greene, Guilford, Hamilton, Letterkenny, Lurgan, Metal and Southampton shall constitute the first district and elect one member.

The residue of the County of Franklin not included in the first district shall constitute the second district and elect one member.

The County of Fulton shall elect one member.

The County of Greene shall elect one member.

The County of Huntingdon shall elect one member.

The County of Indiana shall elect one member.

The County of Jefferson shall elect one member.

The County of Juniata shall elect one member.

The County of Lackawanna shall elect four members and shall be divided into four districts as follows:

The sixth, eighth, ninth, tenth, eleventh, twelfth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second and twenty-fourth wards of the City of Scranton shall constitute the first district and elect one member.

The first, second, third, fourth, fifth, seventh, thirteenth, fourteenth, fifteenth, twenty-first and twenty-third wards of the City of Scranton shall constitute the second district and elect one member.

The City of Carbondale, the boroughs of Archbald, Dickson City, Dunmore, Jermyn, Mayfield, Olyphant, Throop and Winton and the township of Carbondale shall constitute the third district and elect one member.

The residue of the County of Lackawanna not included in the first, second and third districts shall constitute the fourth district and elect one member.

The County of Lancaster shall elect five members and shall be divided into two districts as follows:

The City of Lancaster shall constitute the first district and elect one member.

The residue of the County of Lancaster not included in the first district shall constitute the second district and elect four members.

The County of Lawrence shall elect two members and shall be divided into two districts as follows;

The City of New Castle and the townships of Taylor and Union shall constitute the first district and elect one member.

The residue of the County of Lawrence not included in the first district shall constitute the second district and elect one member.

The County of Lebanon shall elect two members.

The County of Lehigh shall elect four members and shall be divided into two districts as follows:

The City of Allentown shall constitute the first district and elect two members.

The residue of the County of Lehigh not included in the first district shall constitute the second district and elect two members.

The County of Luzerne shall elect six members and shall be divided into six districts as follows:

The City of Hazleton, the boroughs of Freeland, Jeddo, and West Hazleton and the townships of Black Creek, Foster and Hazle shall constitute the first district and elect one member.

The boroughs of Ashley, Conyngham, Laurel Run, Nescopeck, Nuangola, Sugar Notch, Warrior Run and White Haven and the townships of Bear Creek, Bucks, Butler, Conyngham, Dennison, Dorrance, Fairview, Hanover, Hollenback, Nescopeck, Newport, Rice, Salem, Slocum, Sugarloaf, Wilkes-Barre, and Wright shall constitute the second district and elect one member.

The City of Pittston, the boroughs of Avoca, Dupont, Duryea, Hughestown, Laflin, Swoyersville, Wyoming and Yatesville and the townships of Jenkins, Pittston, and Plains shall constitute the third district and elect one member.

The City of Nanticoke, the boroughs of Courtdale, Dallas, Edwardsville, Larksville, New Columbus, Plymouth and Shickshinny and the townships of Dallas, Fairmount, Hunlock, Huntington, Lake, Lehman, Plymouth, Ross and Union shall constitute the fourth district and elect one member.

The boroughs of Exeter, Forty Fort, Kingston, Luzerne, Pringle, West Pittston and West Wyoming and the townships of Exeter, Franklin, Jackson and Kingston shall constitute the fifth district and elect one member.

The City of Wilkes-Barre shall constitute the sixth district and elect one member.

The County of Lycoming shall elect two members and shall be divided into two districts as follows:

The City of Williamsport and the township of Loyalsock shall constitute the first district and elect one member.

The residue of the County of Lycoming not included in the first district shall constitute the second district and elect one member.

The County of McKean shall elect one member.

The County of Mercer shall elect two members and shall be divided into two districts as follows:

The City of Sharon, the boroughs of Greenville, Jamestown, New Lebanon, Sandy Lake, Sharpsville and Sheakleyville, and the townships of Deer Creek, French Creek, Greene, Hempfield, Mill Creek, New Vernon, Otter Creek, Perry Salem, Sandy Creek, Sandy Lake, South Pymatuning, Sugar Grove, West Salem and that northwestern portion of the township of Hickory which is separated from the remainder thereof by the borough of Sharpsville and the City of Sharon shall constitute the first district and elect one member.

The residue of the County of Mercer not included in the first district shall constitute the second district and elect one member.

The County of Mifflin shall elect one member.

The County of Monroe shall elect one member.

The County of Montgomery shall elect nine members and shall be divided into four districts as follows:

The boroughs of Bridgeport, Conshohocken, Narberth and West Conshohocken and the townships of Lower Merion and Upper Merion shall constitute the first district and elect two members.

The boroughs of Ambler and Norristown and the townships of East Norriton, Lower Gwynedd, Plymouth, Springfield, Upper Dublin, West Norriton, Whitemarsh and Whitpain shall constitute the second district and elect two members.

The boroughs of Bryn Athyn, Hatboro, Jenkintown and Rockledge and the townships of Abington, Cheltenham, Lower Moreland and Upper Moreland shall constitute the third district and elect two members.

The residue of the County of Montgomery not included in the first, second and third districts shall constitute the fourth district and elect three members.

The County of Montour shall elect one member.

The County of Northampton shall elect four members and shall be divided into three districts as follows:

That portion of the City of Bethlehem in the County of Northampton shall constitute the first district and elect one member.

The boroughs of Bath, Chapman, Freemansburg, Hellertown, Northampton, North Catasauqua, Walnutport and the townships of Allen, Bethlehem, Bushkill, East

Allen, Hanover, Lehigh, Lower Nazareth, Lower Saucon and Moore shall constitute the second district and elect one member.

The residue of the County of Northampton not included in the first and second districts shall constitute the third district and elect two members.

The County of Northumberland shall elect two members and shall be divided into two districts as follows:

The City of Shamokin, the boroughs of Kulpmont, Marion Heights and Mount Carmel and the townships of Coal, East Cameron, Mount Carmel, West Cameron and Zerbe shall constitute the first district and elect one member.

The residue of the County of Northumberland not included in the first district shall constitute the second district and elect one member.

The County of Perry shall elect one member.

The County of Pike shall elect one member.

The County of Potter shall elect one member.

The County of Schuylkill shall elect three members and shall be divided into two districts as follows:

The City of Pottsville; the boroughs of Cressona, Deer Lake, Landingville, Mechanicsville, Middleport, Minersville, Mount Carbon, New Philadelphia, New Ringgold, Orwigsburg, Palo Alto, Port Carbon, Port Clinton, St. Clair and Schuylkill Haven and the townships of Blythe, East Brunswick, East Norwegian, North Manheim, Norwegian, Schuylkill, Walker and West Brunswick shall constitute the first district and elect one member.

The residue of the county of Schuylkill not included in the first district shall constitute the second district and elect two members.

The County of Snyder shall elect one member.

The County of Somerset shall elect one member.

The County of Sullivan shall elect one member.

The County of Susquehanna shall elect one member.

The County of Tioga shall elect one member.

The County of Union shall elect one member.

The County of Venango shall elect one member.

The County of Warren shall elect one member.

The County of Washington shall elect four members and shall be divided into two districts as follows:

The City of Washington, the boroughs of Burgettstown, Canonsburg, Claysville, East Washington, Houston, Midway, West Alexander, West Middletown and that portion of the borough of McDonald in the County of Washington and the townships of Blaine, Buffalo, Canton, Cecil, Chartiers, Cross Creek, Donegal, East Finley, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Franklin, Robinson, Smith, South Franklin, South Strabane and West Finley shall constitute the first district and elect two members.

The residue of the County of Washington not included in the first district shall constitute the second district and elect two members.

The County of Wayne shall elect one member.

The County of Westmoreland shall elect six members and shall be divided into six districts as follows:

The Cities of Arnold, Lower Burrell and New Kensington, the boroughs of East Vandergrift, Hyde Park, Vandergrift and West Leechburg and the townships of Allegheny and Upper Burrell shall constitute the first district and elect one member.

The boroughs of Avonmore, Derry, Export Latrobe, New Alexandria, New Salem and Oklahoma and the townships of Bell, Derry, Franklin, Loyalhanna, Salem and Washington shall constitute the second district and elect one member.

The City of Jeannette, the boroughs of Irwin, Manor, North Irwin, Penn and that portion of the borough of Trafford in the County of Westmoreland and the townships of North Huntingdon and Penn shall constitute the third district and elect one member.

The City of Greensburg, the boroughs of Adamsburg, Arona, Hunker, Madison, South Greensburg, Southwest Greensburg and Youngwood and the township of Hempfield shall constitute the fourth district and elect one member.

The City of Monessen, the boroughs of North Belle Vernon, Smithton, Suterville and West Newton and the townships of Sewickley, South Huntingdon and Rostraver shall constitute the fifth district and elect one member.

The residue of the County of Westmoreland not included in the first, second, third, fourth and fifth districts shall constitute the sixth district and elect one member.

The County of Wyoming shall elect one member.

The County of York shall elect four members and shall be divided into four districts as follows:

The City of York shall constitute the first district and elect one member.

The boroughs of Dillsburg, Dover, Franklintown, Goldsboro, Hallam, Lewisberry, Manchester, Mount Wolf, North York, Wellsville, Wrightsville and York Haven and the townships of Carroll, Conewago, Dover, East Manchester, Fairview, Franklin, Hellam, Manchester, Monaghan, Newberry, Springettsbury, Warrington and Washington shall constitute the second district and elect one member.

The boroughs of Cross Roads, Dallastown, Delta, East Prospect, Fawn Grove, Felton, Jacobus, Loganville, Red Lion, Seven Valleys, Stewartstown, Windsor, Winterstown, Yorkana and Yoe and the townships of Chanceford, East Hopewell, Fawn, Hopewell, Lower Chanceford, Lower Windsor, North Hopewell, Peach Bottom, Springfield, Spring Garden, Windsor and York shall constitute the third district and elect one member.

The residue of the County of York not included in the first, second and third districts shall constitute the fourth district and elect one member.

Section 2. The foregoing apportionment is based on the United States decennial census of 1960. Any township, borough, city or ward created since such census, and not specifically provided for by this act, shall form a part of the district to which the territory comprised within such township, borough, city or ward is allotted by the provisions of this act, according to the political division existing at the time of such census; and any township, borough, city

or ward, or any portion thereof, annexed to any other township, borough, city or ward since such census, shall form a part of the district to which the territory comprised within such township, borough, city or ward, or portion thereof, is allotted by the provisions of this act, according to the political division existing at the time of such census.

Section 3. The first election under this act shall be held at the general election in the year 1964.

The Members of the House of Representatives now in office shall continue in such office until the expiration of their respective terms.

Section 4. The act, approved July 29, 1953 (P. L. 956), entitled "An act to fix the number of Representatives in the General Assembly of the State; and to apportion the State into representative districts, as provided by the Constitution," is hereby repealed.

All other acts and parts of acts inconsistent herewith are hereby repealed.

Section 5. The provisions of this act applicable to each county are severable from the provisions thereof applicable to all other counties; if the provisions hereof applicable to one or more counties is held invalid, the decisions of the court shall affect only the provisions relating to such county or counties and shall not impair the validity of the remaining provisions of this act; if the provisions of this act relating to a county are held invalid, the number of representatives provided for thereby for the county shall nevertheless not be affected; if the number is the same as heretofore, they shall be elected from the same districts as heretofore; if the number is not the same as heretofore, they shall all be elected by the electors of the

county at large in so far as such manner of election is not inconsistent with the Constitution.

We certify that this bill, House Bill No. 1, Printer's No. 5, has passed the House of Representatives and the Senate.

R. W. Stemmel
Chief Clerk, House of Representatives
W. Stuart Helm
Speaker, House of Representatives
Raymond P. Shafer
President, Senate

Approved the 9th day of January A.D. 1964.
William W. Scranton
Governor

I do hereby certify that the foregoing is a true and correct copy of Act of the General Assembly No. 1.

George I. Bloom
Secretary of the Commonwealth

(Seal)

IV.

PENNSYLVANIA SENATE APPORTIONMENT ACT OF JANUARY 9, 1964, NO. 2

ACT NO. 2

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL NO. 1

Special Session of 1963

Introduced by Mr. Keller, November 12, 1963

As Amended on Third Reading, November 19, 1963

AN ACT

Fixing the number of Senators in the General Assembly of the Commonwealth; apportioning the State into senatorial districts as provided by the Constitution; providing for the election of and the terms of office of the present and future elected Senators and repealing inconsistent laws.

THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA HEREBY ENACTS AS FOLLOWS:

Section 1. Until the next United States decennial census is taken and an apportionment made thereon, the Senate shall consist of fifty members and the State is hereby apportioned into fifty senatorial districts, each of which shall be known by the number herein attached thereto and shall be entitled to elect one Senator as follows to wit:

First District.—The first, second, third, fourth, twenty-sixth, thirtieth, thirty-sixth, thirty-ninth and forty-eighth wards in the City of Philadelphia.

Second District.—The fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, nineteenth, twentieth, twenty-ninth, thirty-first and forty-seventh wards in the City of Philadelphia.

Third District.—The thirty-third, thirty-seventh, thirty-eighth, forty-third and forty-ninth wards in the City of Philadelphia.

Fourth District.—The twenty-seventh, fortieth, forty-fourth, forty-sixth, fifty-first and sixtieth wards in the City of Philadelphia.

Fifth District.—The thirty-fifth, forty-second, fifty-third, fifty-sixth, fifty-seventh and fifty-eighth wards in the City of Philadelphia.

Sixth District.—The twenty-first, twenty-second, fiftieth and fifty-ninth wards in the City of Philadelphia.

Seventh District.—The twenty-fourth, twenty-eighth, thirty-second, thirty-fourth and fifty-second wards in the City of Philadelphia.

Eighth District.—The eighteenth, twenty-third, twenty-fifth, forty-first, forty-fifth, fifty-fourth, and fifty-fifth wards in the City of Philadelphia.

Ninth District.—The County of Delaware until November 30, 1966. Thereafter the ninth district shall consist of the City of Chester; the boroughs of Brookhaven, Chester Heights, Eddystone, Marcus Hook, Media, Morton, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Swarthmore, Trainer and Upland; and the townships of Aston, Bethel, Birmingham, Chester, Concord, Edgemont, Lower Chichester, Middletown, Nether Providence, Newtown, Ridley, Springfield, Thornbury, Tinicum, Upper Chichester and Upper Providence in the County of Delaware.

Tenth District.—The County of Bucks.

Eleventh District.—The County of Berks.

Twelfth District.—The County of Montgomery until November 30, 1964. Thereafter the twelfth district shall consist of the boroughs of Ambler, Bryn Athyn, Hatboro, Jenkintown, Norristown and Rockledge and the townships of Abington, Cheltenham, East Norriton, ~~Horsham~~, Lower Gwynedd, Lower Moreland, Plymouth, Springfield, Upper Dublin, Upper Moreland, West Norriton, Whitemarsh and Whitpain in the County of Montgomery.

Thirteenth District.—The County of Lancaster.

Fourteenth District.—The Counties of Carbon, Monroe, Pike and Wayne.

Fifteenth District.—The County of Dauphin.

Sixteenth District.—The County of Lehigh.

Seventeenth District.—After November 30, 1964, the seventeenth district shall consist of the residue of the County of Montgomery not included in the twelfth district.

Eighteenth District.—The County of Northampton.

Nineteenth District.—The County of Chester.

Twentieth District.—The County of Luzerne.

Twenty-first District.—The Counties of Butler and Lawrence.

Twenty-second District.—The County of Lackawanna.

Twenty-third District.—The Counties of Wyoming, Susquehanna, Bradford, Tioga and Sullivan.

Twenty-fourth District.—The Counties of Lycoming, Montour and Columbia.

Twenty-fifth District.—The Counties of Clinton, Cameron, Potter, McKean, and Warren.

Twenty-sixth District.—The Counties of Clarion, Forest and Elk until November 30, 1966. Thereafter the twenty-sixth district shall be composed of the residue of the County of Delaware not included in the ninth district.

Twenty-seventh District.—The Counties of Union, Snyder and Northumberland.

Twenty-eighth District.—The County of York.

Twenty-ninth District.—The Counties of Schuylkill and Lebanon.

Thirtieth District.—The Counties of Blair and Huntingdon.

Thirty-first District.—The Counties of Mifflin, Juniata, Perry and Cumberland.

Thirty-second District.—The Counties of Greene and Fayette.

Thirty-third District.—The Counties of Franklin and Adams.

Thirty-fourth District.—The Counties of Clearfield and Centre.

Thirty-fifth District.—The County of Cambria.

Thirty-sixth District.—The Counties of Fulton, Bedford and Somerset.

Thirty-seventh District.—The Cities of Clairton, Duquesne and McKeesport, the Boroughs of Braddock, Dravosburg, East Pittsburgh, Elizabeth, Glassport, Homestead, Jefferson, Liberty, Lincoln, Munhall, North Braddock, Port Vue, Rankin, Versailles, West Elizabeth, West Homestead, West Mifflin and Whitaker and the townships of Forward and Snowden in the County of Allegheny.

THIRTY-SEVENTH DISTRICT.—THE BOROUGHS OF BALDWIN, BETHEL PARK, BRENTWOOD, BRIDGEVILLE, CARNEGIE, CASTLE SHANNON, CRAFTON, DORMONT, GREEN TREE, HEIDELBERG, INGRAM, PLEASANT HILLS, ROSSLYN FARMS, THORNBURG AND WHITEHALL, AND THE TOWNSHIPS OF BALDWIN, COLLIER, MOUNT LEBANON, SCOTT, SOUTH FAYETTE AND UPPER ST. CLAIR IN THE COUNTY OF ALLEGHENY.

Thirty-eight District.—The first, second, third, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth,

twenty-third, twenty-fourth and twenty-sixth wards in the City of Pittsburgh; the borough of Millvale and the township of Reserve in the County of Allegheny.

Thirty-ninth District.—The County of Westmoreland.

Fortieth District.—The boroughs of Aspinwall, Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Bradford Woods, Cheswick, Edgeworth, Emsworth, Etna, Fox Chapel, Franklin Park, Glenfield, Haysville, Leetsdale, Osborne, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Springdale, Tarentum and West View; and the townships of Aleppo, East Deer, Fawn, Frazer, Hampton, Harmar, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, O'Hara, Ohio, Pine, Richland, Ross, Shaler, Springdale and West Deer in the County of Allegheny.

Forty-first District.—The Counties of Jefferson, Indiana and Armstrong.

Forty-second District.—The nineteenth, twentieth, twenty-first, twenty-second, twenty-fifth, twenty-seventh and twenty-eighth wards in the City of Pittsburgh, the borough of Coraopolis, that part of the borough of McDonald located in Allegheny County, the boroughs of McKees Rocks and Oakdale and the townships of Crescent, Findlay, Kennedy, Moon, Neville, North Fayette, Robinson and Stowe, in the County of Allegheny.

Forty-third District.—The fourth, fifth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twenty-ninth, thirtieth, thirty-first and thirty-second wards in the City of Pittsburgh and the borough of Mt. Oliver in the County of Allegheny.

Forty-fourth District.—The boroughs of Braddock Hills, Chalfant, Churchill, East McKeesport, Edgewood, Forest Hills, Monroeville, Oakmont, Pitcairn, Plum, Swissvale, that part of the borough of Trafford located in Allegheny County, the boroughs of Turtle Creek, Verona, Wall, White Oak, Wilkinsburg, and Wilmerding and the townships of Elizabeth, North Versailles, Penn Hills, South Versailles and Wilkins in the County of Allegheny.

Forty-fifth District.—The boroughs of Baldwin, Bethel Park, Brentwood, Bridgeville, Carnegie, Castle Shannon, Crafton, Dormont, Green Tree, Heidelberg, Ingram, Pleasant Hills, Rosslyn Farms, Thornburg and Whitehall, and the townships of Baldwin, Collier, Mount Lebanon, Scott, South Fayette and Upper St. Clair in the County of Allegheny.

FORTY-FIFTH DISTRICT.—THE CITIES OF CLAIRTON, DUQUESNE AND MCKEESPORT, THE BOROUGHS OF BRADDOCK, DRAVOSBURG, EAST PITTSBURGH, ELIZABETH, GLASSPORT, HOMESTEAD, JEFFERSON, LIBERTY, LINCOLN, MUNHALL, NORTH BRADDOCK, PORT VUE, RANKIN, VERSAILLES, WEST ELIZABETH, WEST HOMESTEAD, WEST MIFFLIN AND WHITAKER AND THE TOWNSHIPS OF FORWARD AND SNOWDEN IN THE COUNTY OF ALLEGHENY.

Forty-sixth District.—The County of Washington.

Forty-seventh District.—The County of Beaver.

Forty-eighth District.—The County of Venango until November 30, 1966. Thereafter the forty-eighth district shall be the Counties of Venango, Clarion, Forest and Elk.

Forty-ninth District.—The County of Erie.

Fiftieth District.—The Counties of Crawford and Mercer.

Section 2. The districts as above enumerated shall be based on the decennial census of the United States for the year 1960 and shall take the lines and boundaries and include all the territory within the same as said lines and districts respectfully exist at the effective date of this act.

Section 3. The nomination and election of a State Senator shall be made, held and conducted and the return of votes cast at primary and general elections for the nomination and election of such members shall be made, computed, canvassed and certified as now or hereafter may be provided by law.

Section 4. At the general election in the year 1964 and quadriennially thereafter, Senators shall be chosen to serve for four years in the odd-numbered districts. At the general election in the year 1966 and quadriennially thereafter, Senators shall be chosen to serve for four years in the even-numbered districts.

The members of the Senate now in office shall continue in such office until the expiration of their respective terms.

Section 5. The act of May 10, 1921 (P. L. 449), entitled "An act to fix the number of Senators in the General Assembly of the State; to apportion the State into senatorial districts, as provided by the Constitution; and to regulate the election of, and the terms of office of, the present and future elected Senators," is repealed in so far as inconsistent.

Section 6. This act shall take effect with respect to odd-numbered districts on November 30, 1964 and with respect to even-numbered districts on November 30, 1966 except as otherwise provided herein. Elections for Senators to represent odd-numbered districts shall be held at the general election in 1964. Elections for Senators to represent even-numbered districts shall be held at the general election in 1966.

We certify that this bill, Senate Bill No. 1, Printer's No. 3, has passed the Senate and House of Representatives.

A. H. Letzler
Chief Clerk, Senate
Raymond P. Shafer
President, Senate
W. Stuart Helm
Speaker, House of Representatives

Approved the 9th day of January A.D. 1964.

William W. Scranton
Governor

I do hereby certify that the foregoing is a true and correct copy of Act of the General Assembly No. 2.

George I. Bloom
Secretary of the Commonwealth

(Seal)

APPENDIX C

I.

CHART ENTITLED "THE NEW REAPPORTIONMENT IN PENNSYLVANIA POPULATION AND REPRESENTATION BY COUNTY"

THE NEW REAPPORTIONMENT IN PENNSYLVANIA POPULATION AND REPRESENTATION BY COUNTY

County	*Percent of Population*	*Percent of House Seats*	*Percent of Senate Seats*
Adams	.458	.478	.740
Allegheny	14.380	13.397	14.000
Armstrong	.702	.478	1,778
Beaver	1.828	1.913	2.000
Bedford	.375	.478	.650
Berks	2.433	2,392	2.000
Blair	1.212	1.435	1.552
Bradford	.485	.478	.742
Bucks	2.726	2.392	2.000
Butler	1.010	.956	1.008
Cambria	1.785	1.913	2.000
Cameron	.067	.478	.092
Carbon	.467	.478	.816
Centre	.694	.478	.980
Chester	1.861	1.913	2.000
Clarion	.330	.478	.518
Clearfield	.720	.478	1.020
Clinton	.332	.478	.466

County	*Percent of Population*	*Percent of House Seats*	*Percent of Senate Seats*
Columbia	.473	.478	.596
Crawford	.683	.478	.758
Cumberland	1.102	.956	1.180
Dauphin	1.945	1.913	2.000
Delaware	4.887	4.306	4.000
Elk	.330	.478	.516
Erie	2.315	1.913	2.000
Fayette	1.496	1.435	1.624
Forest	.040	.473	.062
Franklin	.779	.956	1.260
Fulton	.093	.478	.164
Greene	.348	.478	.376
Huntingdon	.349	.478	.448
Indiana	.656	.478	.746
Jefferson	.415	.478	.466
Juniata	.140	.478	.150
Lackawanna	2.072	1.913	2.000
Lancaster	2.458	2.392	2.000
Lawrence	.998	.956	.992
Lebanon	.803	.956	.689
Lehigh	2.010	1.913	2.000
Luzerne	3.065	2.870	2.000
Lycoming	.966	.956	1.219
McKean	.482	.478	.675
Mercer	1.127	.956	1.242
Mifflin	.392	.478	.420
Monroe	.350	.478	.610
Montgomery	4.525	4.306	4.000
Montour	.148	.478	.186
Northampton	1.779	1.913	2.000
Northumberland	.920	.956	1.338

County	*Percent of Population*	*Percent of House Seats*	*Percent of Senate Seats**
Perry	.235	.478	.250
Philadelphia	17.691	16.746	16.000
Pike	.081	.478	.140
Potter	.146	.478	.204
Schuylkill	1.529	1.435	1.312
Snyder	.229	.478	.332
Somerset	.684	.478	1.186
Sullivan	.055	.478	.084
Susquehanna	.293	.478	.449
Tioga	.323	.478	.496
Union	.226	.478	.330
Venango	.567	.478	.904
Warren	.403	.478	.564
Washington	1.918	1.913	2.000
Wayne	.248	.478	.434
Westmoreland	3.105	2.870	2.000
Wyoming	.149	.478	.226
York	2.106	1.913	2.000

* Where floterial districts exist as is frequently the case in the senate, the representation of each county has been calculated on the percent of the total population of the district residing in that county. For example, Adams County which shares its senator with Franklin County does not have one/half a senator—there being two counties in the district—but 37% of a senator, in proportion to its voting strength in the district. Thus the calculations for Adams County would be, first, that the 33rd senatorial district has 2% of the total senate seats and Adams County has 37% of that 2%, hence, Adams County has 0.74% of the total representation in the Senate.

II.

TABLE FROM PENNSYLVANIA STATISTICAL ABSTRACT, ENTITLED "AREA AND POPULATION OF COUNTIES, URBAN AND RURAL: 1960"

TABLE 4: AREA AND POPULATION OF COUNTIES, URBAN AND RURAL: 1960

County	Land Area in square miles 1960	1960 Population				
		Total		Urban		Rural
		Number	Per square mile	Number	Percent of population	
Total	45,037	11,319,366	251.5	8,102,051	71.6	3,217,315
Adams	526	51,906	98.7	13,555	26.1	38,351
Allegheny	730	1,628,587	2,230.9	1,517,080	93.2	111,507
Armstrong	656	79,524	121.2	18,472	23.2	61,052
Beaver	441	206,948	469.3	146,770	70.9	60,178
Bedford	1,016	42,451	41.8	3,696	8.7	38,755
Berks	864	275,414	318.8	177,095	64.3	98,319
Blair	531	137,270	258.5	93,787	68.3	43,483
Bradford	1,147	54,925	47.9	16,725	30.5	38,200
Bucks	617	308,567	500.1	232,268	75.3	76,299
Butler	794	114,639	144.4	33,562	29.3	81,077
Cambria	695	203,283	292.5	123,141	60.6	80,142
Cameron	399	7,586	19.0	3,397	44.8	4,189

County	Land Area in square miles 1960	1960 Population Total Number	Total Per square mile	Urban Number	Urban Percent of population	Rural
Carbon	405	52,889	130.6	33,854	64.0	19,035
Centre	1,115	78,580	70.5	32,369	41.2	46,211
Chester	760	210,608	277.1	92,337	43.8	118,271
Clarion	599	37,408	62.5	4,958	13.3	32,450
Clearfield	1,144	81,534	71.3	23,168	28.4	58,366
Clinton	902	37,619	41.7	15,064	40.0	22,555
Columbia	484	53,489	110.5	24,238	45.3	29,251
Crawford	1,016	77,956	76.7	25,027	32.1	52,929
Cumberland	555	124,816	224.9	73,727	59.1	51,089
Dauphin	520	220,255	423.6	169,374	76.9	50,881
Delaware	185	553,154	2,990.0	530,792	96.0	22,362
Elk	807	37,328	46.3	19,418	52.0	17,910
Erie	812	250,682	308.7	193,213	77.1	57,469
Fayette	794	169,340	213.3	50,962	30.1	118,378
Forest	416	4,485	10.8	—	—	4,485
Franklin	754	88,172	116.9	32,152	36.5	56,020
Fulton	435	10,597	24.4	—	—	10,597
Greene	577	39,424	68.3	5,188	13.2	34,236
Huntingdon	892	39,457	44.2	11,325	28.7	28,132
Indiana	825	75,366	91.4	17,935	23.8	57,431
Jefferson	652	46,792	71.8	19,146	40.9	27,646
Juniata	387	15,874	41.0	—	—	15,874

County	Land Area in square miles 1960	1960 Population Total Number	Total Per square mile	Urban Number	Urban Percent of population	Rural
Lackawanna	454	234,531	516.6	210,676	89.8	23,855
Lancaster	944	278,359	294.9	137,892	49.5	140,467
Lawrence	367	112,965	307.8	59,403	52.6	53,562
Lebanon	363	90,853	250.3	44,576	49.1	46,277
Lehigh	347	227,536	655.7	180,676	79.4	46,860
Luzerne	891	346,972	389.4	281,507	81.1	65,465
Lycoming	1,214	109,367	90.1	66,234	60.6	43,133
McKean	997	54,517	54.7	23,183	42.5	31,334
Mercer	681	127,519	187.3	68,595	53.8	58,924
Mifflin	431	44,348	102.9	15,395	34.7	28,953
Monroe	611	39,567	64.8	13,744	34.7	25,823
Montgomery	491	516,682	1,052.3	410,685	79.5	105,997
Montour	130	16,730	128.7	6,889	41.2	9,841
Northampton	374	201,412	538.5	138,341	68.7	63,071
Northumberland	454	104,138	229.4	64,600	62.0	39,538
Perry	550	26,582	48.3	2,580	9.7	24,002
Philadelphia	127	2,002,512	15,767.8	2,002,512	100.0	—
Pike	545	9,158	16.8	—	—	9,158
Potter	1,090	16,483	15.1	2,889	17.5	13,594
Schuylkill	783	173,027	221.0	93,579	54.1	79,448
Snyder	329	25,922	78.8	3,948	15.2	21,974
Somerset	1,084	77,450	71.4	16,242	21.0	61,208

County	Land Area in square miles 1960	1960 Population Total Number	Total Per square mile	Urban Number	Urban Percent of population	Rural
Sullivan	478	6,251	13.1	—	—	6,251
Susquehanna	836	33,137	39.6	5,242	15.8	27,895
Tioga	1,150	36,614	31.8	7,047	19.2	29,567
Union	318	25,646	80.6	5,523	21.5	20,123
Venango	675	65,295	96.7	34,020	52.1	31,275
Warren	910	45,582	50.1	14,505	31.8	31,077
Washington	857	217,271	253.5	89,399	41.1	127,872
Wayne	744	28,237	38.0	5,569	19.7	22,668
Westmoreland	1,023	352,629	344.7	213,935	60.7	138,694
Wyoming	396	16,813	42.5	—	—	16,813
York	911	238,336	261.6	128,870	54.1	109,466

Source: Compiled by the Bureau of Statistics, Department of Internal Affairs from data received from U. S. Department of Commerce, Bureau of the Census, *1960 Census of Population*, "Volume I, Characteristics of the Population, Part A, Number of Inhabitants, Pennsylvania".

III.

TABLE FROM PENNSYLVANIA STATISTICAL ABSTRACT, ENTITLED "VOTER REGISTRATION FOR COUNTIES IN PENNSYLVANIA, NOVEMBER 5, 1963"

TABLE 125: VOTER REGISTRATION FOR COUNTIES IN PENNSYLVANIA: NOVEMBER 5, 1963

County	*Number of election districts*	*Total number of registered voters*
Total	9,246	5,466,718
Adams	44	22,597
Allegheny	1,281	809,646
Armstrong	75	38,853
Beaver	122	93,391
Bedford	43	21,708
Berks	209	125,451
Blair	117	58,981
Bradford	72	24,530
Bucks	173	139,355
Butler	93	49,550
Cambria	190	96,832
Cameron	11	3,820
Carbon	61	27,668
Centre	70	30,074
Chester	157	93,432
Clarion	49	18,303
Clearfield	109	37,132
Clinton	41	16,426
Columbia	63	27,416
Crawford	66	32,400

County	*Number of election districts*	*Total number of registered voters*
Cumberland	76	56,566
Dauphin	149	106,090
Delaware	350	283,610
Elk	32	16,707
Erie	142	116,857
Fayette	123	78,221
Forest	13	2,622
Franklin	70	39,412
Fulton	12	5,042
Greene	51	19,586
Huntingdon	68	17,950
Indiana	77	36,283
Jefferson	74	24,350
Juniata	20	8,524
Lackawanna	246	151,393
Lancaster	160	117,973
Lawrence	101	51,859
Lebanon	55	38,537
Lehigh	125	102,152
Luzerne	412	191,848
Lycoming	100	51,420
McKean	53	23,088
Mercer	102	55,906
Mifflin	32	16,821
Monroe	36	19,191
Montgomery	271	254,318
Montour	14	7,272
Northampton	129	90,902
Northumberland	105	54,382
Perry	33	13,685
Philadelphia	1,640	981,332

County	*Number of election districts*	*Total number of registered voters*
Pike	14	6,648
Potter	34	8,407
Schuylkill	212	100,584
Snyder	25	11,321
Somerset	67	39,562
Sullivan	15	3,507
Susquehanna	57	17,549
Tioga	45	17,359
Union	23	10,952
Venango	77	27,143
Warren	49	19,632
Washington	189	103,353
Wayne	48	15,310
Westmoreland	289	170,725
Wyoming	29	9,665
York	156	103,537

Source: Pennsylvania Department of State, Bureau of Commissions and Elections.

IV.

ABLE FROM PENNSYLVANIA STATISTICAL ABSTRACT, ENTITLED "STATE UMMARY FOR MANUFACTURING INDUSTRIES IN PENNSYLVANIA, BY COUNTY: 1962"

TABLE 202: STATE SUMMARY FOR MANUFACTURING INDUSTRIES IN PENNSYLVANIA, BY COUNTY: 1962

(All money figures in thousands of dollars.)

County	Number of establishments	Capital expenditures	Number of employees	Wages and salaries	Value of production and related activities	Value added by manufacture
Total	17,820	$796,135	1,378,576	$7,222,696	$27,297,364	$13,235,778
dams	107	4,023	7,360	25,025	99,998	46,788
llegheny	1,609	112,089	147,264	963,183	3,832,241	1,589,122
rmstrong	77	3,138	5,470	31,549	136,815	88,466
eaver	194	43,498	43,548	279,011	1,055,678	478,048
edford	45	288	1,544	5,006	13,836	7,595
erks	641	24,311	51,972	238,962	842,890	423,702
lair	148	6,368	12,042	52,445	208,182	106,377
radford	68	1,830	4,791	23,157	82,915	52,952
ucks	518	25,834	34,307	199,573	861,727	465,134

County	Number of establishments	Capital expenditures	Number of employees	Wages and salaries	Value of production and related activities	Value added by manufacture
Butler	149	8,630	11,071	68,889	299,566	133,380
Cambria	177	24,672	18,510	103,973	323,360	157,759
Cameron	10	559	1,591	9,671	21,737	13,352
Carbon	112	2,699	9,134	30,028	101,295	51,753
Centre	79	1,670	4,486	20,495	73,922	42,125
Chester	273	17,021	26,619	146,080	656,790	333,920
Clarion	69	842	2,696	13,070	43,455	24,369
Clearfield	113	2,684	5,015	20,894	80,771	38,519
Clinton	54	4,289	5,490	26,819	106,197	51,402
Columbia	109	3,490	10,179	42,152	172,197	68,831
Crawford	136	3,287	9,114	44,799	155,847	77,869
Cumberland	162	5,165	10,389	44,072	225,936	103,468
Dauphin	250	8,847	21,620	101,272	497,658	231,412
Delaware	383	57,542	48,209	302,325	1,220,725	465,086
Elk	63	3,491	7,827	40,659	153,439	108,873
Erie	454	15,760	37,375	218,909	693,858	394,780
Fayette	164	2,086	7,470	30,701	125,275	61,430
Forest	10	152	566	2,327	10,222	5,891
Franklin	136	3,818	10,612	43,470	158,805	74,786
Fulton	21	201	465	1,322	2,784	2,198
Greene	31	165	779	2,249	9,834	3,961
Huntingdon	62	2,214	3,184	11,846	34,874	22,625

County	Number of establishments	Capital expenditures	Number of employees	Wages and salaries	Value of production and related activities	Value added by manufacture
Indiana	71	1,224	3,909	16,481	74,654	39,592
Jefferson	78	1,306	5,536	21,938	62,647	42,916
Juniata	46	157	1,225	3,280	12,228	5,189
Lackawanna (1)	509	6,806	32,856	119,640	356,741	186,598
Lancaster	638	18,122	45,830	225,822	909,757	491,991
Lawrence	144	7,374	11,934	69,268	232,389	117,689
Lebanon	196	6,707	14,058	58,644	216,673	102,394
Lehigh	470	20,422	38,905	187,608	675,392	307,894
Luzerne (1)	735	11,722	47,342	155,952	575,011	290,533
Lycoming	210	8,282	18,939	84,177	298,982	158,826
McKean	100	4,998	7,429	36,703	145,135	78,563
Mercer	155	25,829	19,204	128,313	451,579	198,271
Mifflin	58	4,134	6,142	30,963	97,570	52,415
Monroe	92	2,884	4,768	19,325	60,556	35,524
Montgomery	903	74,485	81,390	482,819	1,589,832	875,420
Montour	14	371	2,151	9,666	34,660	17,037
Northampton	423	17,332	43,947	216,114	692,608	391,724
Northumberland	178	5,811	14,957	58,681	280,597	132,375
Perry	39	167	804	2,172	7,108	3,353
Philadelphia	4,115	102,708	264,789	1,415,484	5,460,663	2,663,612
Pike	17	37	130	416	1,460	800
Potter	42	156	1,298	3,777	11,493	6,147

County	Number of establishments	Capital expenditures	Number of employees	Wages and salaries	Value of production and related activities	Value added by manufacture
Schuylkill	324	6,882	22,080	72,602	235,397	124,736
Snyder	61	873	2,244	7,375	20,717	10,399
Somerset	108	855	3,864	10,815	34,718	18,027
Sullivan	19	232	639	1,824	8,050	2,778
Susquehanna	45	421	2,225	8,679	26,061	13,129
Tioga	44	840	2,623	12,684	65,545	25,893
Union	36	437	1,657	5,759	20,450	12,127
Venango	98	3,390	6,556	35,922	165,310	59,845
Warren	83	3,851	5,156	27,904	99,248	48,964
Washington	196	15,694	16,381	100,165	422,366	161,772
Wayne	67	710	2,474	7,834	24,868	11,449
Westmoreland	406	25,924	39,338	240,691	836,019	418,915
Wyoming	37	162	1,026	2,421	12,023	3,776
York	639	24,166	44,104	197,144	776,232	399,434

Detail may not add to total because of rounding.

(1) A comprehensive coverage check was conducted in Lackawanna and Luzerne counties in 1962. Results show an increase of 7 establishments in Lackawanna county and 45 establishments in Luzerne county. Employment increased 696 in Lackawanna county and 1,923 in Luzerne County.

Source: Pennsylvania Department of Internal Affairs, Bureau of Statistics.

V.

TABLE FROM PENNSYLVANIA STATISTICAL ABSTRACT, FIFTH ANNUAL EDITION, 1962, ENTITLED "POPULATION OF MUNICIPALITIES IN PENNSYLVANIA WITH MORE THAN 16,000 POPULATION IN 1960, BY TYPE OF MUNICIPALITY"

TABLE 3: POPULATION OF MUNICIPALITIES WITH MORE THAN 16,000 POPULATION IN 1960, BY TYPE OF MUNICIPALITY

Municipality		*1960*
Cities	*County*	
Philadelphia	Phila.	2,002,512
Pittsburgh	Allegheny	604,332
Erie	Erie	138,440
Scranton	Lackawanna	111,443
Allentown	Lehigh	108,347
Reading	Berks	98,177
Harrisburg	Dauphin	79,697
Bethlehem	Northampton	75,408
Altoona	Blair	69,407
Chester	Delaware	63,658
Wilkes-Barre	Luzerne	63,551
Lancaster	Lancaster	61,055
Johnstown	Cambria	53,949
York	York	54,504
McKeesport	Allegheny	45,489
New Castle	Lawrence	44,790
Williamsport	Lycoming	41,967
Hazleton	Luzerne	32,056
Easton	Northampton	31,955
Lebanon	Lebanon	30,045
Sharon	Mercer	25,267
Washington	Washington	23,545
New Kensington	Westmoreland	23,485
Pottsville	Schuylkill	21,659

Municipality	*County*	*1960*
Cities		
Butler	Butler	20,975
Monessen	Westmoreland	18,424
Clairton	Allegheny	18,389
Uniontown	Fayette	17,942
Oil City	Venango	17,692
Greensburg	Westmoreland	17,383
Meadville	Crawford	16,671
Jeannette	Westmoreland	16,565
Beaver Falls	Beaver	16,240
Boroughs		
Norristown	Montgomery	38,925
Wilkinsburg	Allegheny	30,066
West Mifflin	Juniata	27,289
Aliquippa	Beaver	26,369
Pottstown	Montgomery	26,144
Baldwin	Allegheny	24,489
Bethel	Berks	23,650
Monroeville	Allegheny	22,446
State College	Centre	22,409
Kingston	Luzerne	20,261
Dunmore	Lackawanna	18,917
Chambersburg	Franklin	17,670
Munhall	Allegheny	17,312
Carlisle	Cumberland	16,623
Whitehall	Allegheny	16,075
Townships		
Upper Darby	Delaware	93,158
Lower Merion	Montgomery	59,420
Bristol	Bucks	59,298
Abington	Montgomery	55,831
Haverford	Delaware	54,019
Penn Hills	Allegheny	51,512
Cheltenham	Montgomery	35,990
Ridley	Delaware	35,738
Mt. Lebanon	Allegheny	35,361
Hempfield	Westmoreland	29,704
Falls	Bucks	29,082
Millcreek	Erie	28,441
Middletown	Dauphin	26,894

Municipality		*1960*
Cities	*County*	
Springfield (Delaware Co.)	Delaware	26,733
Ross	Allegheny	25,952
Shaler	Allegheny	24,949
Bensalem	Bucks	23,478
North Huntingdon	Westmoreland	21,853
Radnor	Delaware	21,697
Upper Moreland	Montgomery	21,032
Springfield (Montgomery Co.)	Montgomery	20,652
Marple	Delaware	19,722
Scott	Allegheny	19,094
Lower Paxton	Dauphin	17,618
Susquehanna	Dauphin	17,474
Upper Merion	Montgomery	17,096
Tredyffrin	Chester	16,004

(1) Formed from part of Scott Township after 1910.

(2) Formed from part of Moreland Township after 1910.

(3) Figures up to and including 1940 are for Mifflin Township from which West Mifflin was formed after 1940.

(4) Figures up to and including 1940 are for Bethel Township from which Bethel was formed after 1940.

(5) Whitehall was formed from parts of Bethel and Baldwin Township after 1940.

(6) Figures up to and including 1950 are for Baldwin Township from which Baldwin was formed affer 1950.

(7) Figures up to and including 1950 are for Patton Township from which Monroeville was formed after 1950.

Source: U. S. Department of Commerce, Bureau of the Census, *Fourteenth Census of the United States, 1920*, Volume III; *Fifteenth Census of the United States, 1930*, Volume III, Part 2; *Sixteenth Census of the United States, 1940*, Volume II, Part 6; and *U. S. Census of Population, 1960, Pennsylvania*, "General Population Characteristics", PC(1)-40B.

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IN THE

Supreme Court of the United States

October Term, 1964.

No. 201.

WILLIAM W. SCRANTON, Governor, et al.,
Appellants,

v.

IRA WALTON DREW, et al.,
Appellees.

On Appeal From the United States District Court for the Middle District of Pennsylvania.

MOTION TO AFFIRM.

Of Counsel:
GONCER M. KRESTAL,
BLANK, RUDENKO, KLAUS & ROME,
1660 Suburban Station Building,
Philadelphia, Pennsylvania. 19103.

MARVIN COMISKY,
Counsel for Appellees, Ira Walton Drew, et al.

Of Counsel:
HERBERT W. YANOWITZ,
WOLF, BLOCK, SCHORR & SOLIS-COHEN,
12th Floor Packard Building,
Philadelphia, Pennsylvania. 19102.

THOMAS D. MCBRIDE,
BERNARD M. BORISH,
Counsel for Appellees, Michael Johnson, et al.

International, 711 So. 50th St., Phila., Pa. 19143

INDEX.

	Page
QUESTIONS PRESENTED	2
STATEMENT	4
A. History of the Case	4
B. The Legislative Apportionment Scheme	5
1. The House of Representatives	6
a. The Constitution	6
b. The Legislation	6
2. The Senate	7
a. The Constitution	7
b. The Legislation	7
ARGUMENT	8
I. The Lower Court's Decision With Regard to the Invalidity of the Apportionment in the Pennsylvania House of Representatives Is Correct	9
A. The Pennsylvania Constitutional Requirement That Each County Be Given One Representative Regardless of Population Is Invalid	9
1. The Representative Districts Are Grossly Disproportionate	9
2. The Court Below Fully Respected Political Boundaries	11
B. The Pennsylvania Constitutional Device for Allocation of Additional Representatives Also Is Invalid	13
C. The Commonwealth's Remaining Arguments Are Fallacious	14

INDEX (Continued).

Page

II. The Lower Court's Decision With Regard to the Pennsylvania Senatorial Apportionment Act Is Correct 16

A. This Court Need Not Pass Upon the Validity of the Senatorial Apportionment Act 16

B. The Senatorial Districts Are Grossly Disproportionate 16

C. The Constitutional Limitation on the Maximum Number of Senators Which a County Can Receive Is Invalid 18

III. The Lower Court's Decision With Regard to the Multi-Member Districts Allocated by the House Apportionment Act Is Correct 20

CONCLUSION 23

TABLE OF CASES CITED.

	Page
Ashwander v. TVA, 297 U. S. 288 (1936)	20
Davis v. Mann, 84 S. Ct. 1453 (1964)	8
Drew v. Scranton, 229 F. Supp. 310 (M. D. Pa. 1964)	5, 11, 14, 19, 20, 21
Germano v. Kerner, 84 S. Ct. 1908 (1964)	8
Hearne v. Smylie, 84 S. Ct. 1917 (1964)	8
Hill v. Davis, 84 S. Ct. 1918 (1964)	8, 12
Lucas v. Forty-Fourth General Assembly of State of Colorado, 84 S. Ct. 1472 (1964)	8, 16, 22
Marshall v. Hare, 84 S. Ct. 1912 (1964)	8
Maryland Committee for Fair Representation v. Tawes, 84 S. Ct. 1442 (1964)	8
Morey v. Doud, 354 U. S. 457 (1957)	21
Nolan v. Rhodes, 84 S. Ct. 1906 (1964)	8, 12
Phillips Chemical Co. v. Dumas Independent School District, 361 U. S. 376 (1960)	21
Pinney v. Butterworth, 84 S. Ct. 1918 (1964)	8
Reynolds v. Sims, 84 S. Ct. 1362 (1964)	8, 9, 10, 11, 12, 14, 16, 18, 19, 21, 22
Roman v. Sincock, 84 S. Ct. 1462 (1964)	8
F. S. Royster Guano Co. v. Virginia, 253 U. S. 412 (1920)	21
Skinner v. Oklahoma, 316 U. S. 535 (1942)	21
Swann v. Adams, 84 S. Ct. 1904 (1964)	8
Williams v. Moss, 84 S. Ct. 1907 (1964)	8
WMCA, Inc. v. Lomenzo, 84 S. Ct. 1418 (1964)	8, 12, 18

STATUTES AND RULES CITED.

	Page
Act of January 9, 1964, P. L. 1419, Pa. Stat. Annot. tit. 25, §§ 2221-22 (1963 Supp.)	4, 6, 9, 10, 11, 13, 20, 21, 22
Act of January 9, 1964, P. L. 1432, Pa. Stat. Annot. tit. 25, §§ 2217-20 (1963 Supp.)	5, 7, 16, 17, 19
Pennsylvania Constitution:	
Article II, § 16	7, 18
Article II, § 17	6, 11, 13
Article II, § 18	5
28 U. S. C. § 2281	4
28 U. S. C. § 2284	4

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 201.

WILLIAM W. SCRANTON, ET AL.,
Appellants,

v.

IRA WALTON DREW, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

MOTION TO AFFIRM.

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the questions raised by appellants have been decided by this Court in its recent decisions on state legislative apportionment and are, therefore, so insubstantial as not to warrant further argument.

QUESTIONS PRESENTED.

1. Whether a legislative apportionment scheme which requires that each of the State's 67 counties, regardless of population, elect at least one member to the House of Representatives, as a result of which the maximum population-variance ratio thereunder reaches 18 to 1, and 43.2% of the total population of the State elect the majority of the House of Representatives, contravenes the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the provision of the Pennsylvania Constitution which prevents a county containing five or more ratios from receiving an additional representative unless it has a full population ratio, while on the other hand permitting a county containing four or fewer ratios to receive an additional representative with a majority fraction of a ratio, contravenes the Equal Protection Clause where there was a finding that there is no rational basis for this provision.

3. Whether an apportionment scheme for the Pennsylvania Senate, as a result of which the maximum population-variance ratio is greater than 2.5-to-1, and substantially under-represented senatorial districts adjoin substantially over-represented senatorial districts contravenes the Equal Protection Clause of the Fourteenth Amendment.

4. Whether the provision in the Pennsylvania Constitution which limits the number of senators that may be elected from any county no matter how many persons it contains contravenes the Equal Protection Clause of the Fourteenth Amendment, when this provision admittedly was inserted in an effort to curb the political influence of the urban areas of the State.

5. Whether the provisions of the Pennsylvania Representative Apportionment Act creating 116 single-member districts and 39 multi-member districts which are allocated in a manner following no logical or consistent pattern, whereby single counties contain a conglomeration of single-member districts, two-member districts, three-member districts and four-member districts, and whereby adjoining counties with common socio-economic characteristics contain different patterns of single-member and multi-member districts, are so irrational and arbitrary as to contravene the Equal Protection Clause of the Fourteenth Amendment.

6. Whether the fact that inequalities and disparities in representation are compelled by the Pennsylvania Constitution insulates the implementing legislation from the mandate of the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT.

A. History of the Case.

This is a direct appeal from the final judgment and decree entered on April 9, 1964, by a District Court of three judges specially constituted pursuant to 28 U. S. C. §§ 2281 and 2284, enjoining appellants from enforcing the 1964 Acts apportioning the Pennsylvania General Assembly or performing any duties under the Pennsylvania Election Code in connection with any primary or general election of state senators or representatives pursuant thereto.

On November 22, 1963, appellees, Ira Walton Drew, et al., filed in the United States District Court for the Middle District of Pennsylvania Civil Action No. 8293 against the Governor of the Commonwealth and various other state officials, including the presiding officers of both houses of the legislature, to enjoin the enactment and enforcement of reapportionment legislation then being considered by a Special Session of the General Assembly. Appellees alleged that the proposed legislation provided for an apportionment of the Senate and House of Representatives which was so grossly disproportionate as to be invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. After a hearing on a preliminary injunction, appellees' application was denied on the ground that the action was brought prematurely. The denial was without prejudice to appellees' right to seek relief under their complaint upon enactment of the legislation.

On January 9, 1964, the Governor signed the two acts which had been enacted by the Special Session of the General Assembly of 1963 on Reapportionment: (1) the Act of January 9, 1964, P. L. 1419, Pa. Stat. Annot. tit. 25, §§ 2221-22 (1963 Supp.) (hereinafter called the Representative Apportionment Act), fixes the number of representatives in the General Assembly of the Commonwealth and

apportions the State into representative districts; (2) the Act of January 9, 1964, P. L. 1432, Pa. Stat. Annot. tit. 25, §§ 2217-20 (1963 Supp.) (hereinafter called the Senatorial Apportionment Act), fixes the number of senators in the General Assembly of the Commonwealth and apportions the State into senatorial districts.

On January 15, 1964, appellees, Michael Johnson, et al., filed Civil Action No. 8338 in the Middle District of Pennsylvania against George I. Bloom, Secretary of the Commonwealth, attacking the validity of these acts and moved to consolidate their suit with the pending action. At a hearing held on January 16 and 17, 1964, the three-judge District Court granted the Motion for Consolidation, denied the Commonwealth's motions for a stay and for equitable abstention, and the cases proceeded to hearing and determination on their merits.

The three-judge District Court granted appellees' prayer for relief on the grounds that both the Representative Apportionment Act and the Senatorial Apportionment Act were invidiously discriminatory and denied appellees and others similarly situated of their constitutional rights to the equal protection of the laws.[1]

On April 14, 1964, upon motion of appellants, the three-judge District Court stayed its judgment to permit appellants to prosecute their appeal to this Honorable Court. This appeal followed. On July 2, 1964 appellees filed an Application to Remand Record to Consider Vacation of Stay and Further Relief. On July 8, 1964 Mr. Justice Brennan denied the application.

B. The Legislative Apportionment Scheme.

In Pennsylvania, the legislative apportionment scheme results from the Pennsylvania Constitution and implementing legislation, required by Article II, § 18 of the Constitu-

1. The opinion of the United States District Court for the Middle District of Pennsylvania is reported at 229 F. Supp. 310 (M. D. Pa. 1964).

tion to be enacted after every census.[2] The Constitution is in effect the blueprint, and the individual acts provide the actual structure of apportionment.

1. The House of Representatives.

a. *The Constitution.*

Article II, § 17 of the Constitution governs the apportionment of the House of Representatives. Under this provision the population of the State ascertained at the most recent Federal census is divided by 200. The quotient thus obtained becomes a "ratio" which is then used in the allocation of representatives. The Constitution itself does not provide for the number of representatives.

Under the Constitution each county is entitled to at least one representative. As to those counties entitled to more than one representative: those with *fewer* than five full ratios receive an additional representative for each full ratio and for each remaining *fraction* of a ratio exceeding one-half; on the other hand, counties containing five or *more* ratios receive an additional representative only for each full ratio.

Each city with a population equal to a ratio must be allocated a separate representative. Each city entitled to more than four representatives and each county exceeding 100,000 inhabitants must be divided into compact and contiguous representative districts. No district may elect more than four representatives.

b. *The Legislation.*

The Representative Apportionment Act, following the blueprint of the Pennsylvania Constitution, created 209 representative seats which are allocated among 155 repre-

2. All of the constitutional provisions and legislation referred to in this case are set forth in Appendix B to Appellants' Jurisdictional Statement.

sentative districts within the Commonwealth. Of these districts, 116 are single-member districts and 39 are multi-member districts.

2. The Senate.

a. *The Constitution.*

Article II, § 16 of the Pennsylvania Constitution provides for the apportionment of the Senate. Under this provision the State must be divided into 50 single-member senatorial districts of "compact and contiguous territory as nearly equal in population as may be. . . ." Thus the quotient thereby obtained becomes a "ratio" for the purpose of allocating senatorial districts.

Each county containing one or more ratios of population is entitled to elect one senator for each ratio and to elect an additional senator for a surplus of population exceeding three-fifths of a ratio.

An individual county cannot receive a separate senator, however, unless it contains population equalling four-fifths of a ratio. This is subject to an exception where adjoining counties each have population entitling them to at least one senator. In this event, a county with population amounting to less than a full ratio can receive a single senator for population exceeding one-half of a ratio.

Under the Constitution, a county cannot be divided for the purpose of creating a senatorial district unless it is entitled to at least two senators. And no ward, borough or township can be divided in the formation of a district.

Finally, the Constitution limits any city or county to one-sixth of the total number of senators—namely, eight.

b. *The Legislation.*

The Senatorial Reapportionment Act creates 50 districts. In certain instances, one senator is allocated to a county. In other instances a county receives more than one senator. And in still other instances, groups of counties a combined to form a single senatorial district.

ARGUMENT.

Despite the recent historic decisions of this Court,[3] which delineated the standards of the Equal Protection Clause of the Fourteenth Amendment in legislative apportionment cases, appellants, in requesting this Court to note probable jurisdiction, have conjured up imaginary issues, have raised fallacious arguments not presented to the court below, and have distorted and misinterpreted the opinion of Senior Judge Maris which anticipated this Court's decisions with remarkable prescience. The appeal of the Commonwealth of Pennsylvania, therefore, should be treated as were the appeals in the legislative apportionment cases from the other states which were affirmed summarily on the basis of this Court's initial opinions.[4]

The court below decided (1) that the representative districts delineated by the House Apportionment Act are grossly disproportionate in population; (2) that the constitutional device for allocation of additional representatives to counties entitled to more than one representative arbitrarily and irrationally deprives certain counties of additional representatives; (3) that the motley configuration of multi-member representative districts created by the House Apportionment Act for partisan reasons is arbi-

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3. *Reynolds v. Sims*, 84 S. Ct. 1362 (1964); *WMCA, Inc. v. Lomenzo*, 84 S. Ct. 1418 (1964); *Maryland Committee for Fair Representation v. Tawes*, 84 S. Ct. 1442 (1964); *Davis v. Mann*, 84 S. Ct. 1453 (1964); *Roman v. Sincock*, 84 S. Ct. 1462 (1964); *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 84 S. Ct. 1472 (1964).

4. *Williams v. Moss*, 84 S. Ct. 1907 (1964) (Oklahoma); *Pinney v. Butterworth*, 84 S. Ct. 1918 (1964) (Connecticut); *Hill v. Davis*, 84 S. Ct. 1918 (1964) (Iowa). See also *Swann v. Adams*, 84 S. Ct. 1904 (1964) (Florida); *Nolan v. Rhodes*, 84 S. Ct. 1906 (1964) (Ohio); *Germano v. Kerner*, 84 S. Ct. 1908 (1964) (Illinois); *Marshall v. Hare*, 84 S. Ct. 1912 (1964) (Michigan); *Hearne v. Smylie*, 84 S. Ct. 1917 (1964) (Idaho), where decisions upholding the validity of state apportionment schemes were reversed summarily on the basis of this Court's initial opinions.

trary and irrational; (4) that the senatorial districts delineated by the Senatorial Apportionment Act are grossly disproportionate in population; and (5) that the constitutional limitation on the number of senators which Philadelphia County can elect is discriminatory.

Appellees submit that these decisions with respect to the validity of the apportionment of both houses of the Pennsylvania legislature unquestionably are correct and are in conformity with the constitutional principles set forth in this Court's initial legislative apportionment opinions.

I. The Lower Court's Decision With Regard to the Invalidity of the Apportionment in the Pennsylvania House of Representatives Is Correct.

A. The Pennsylvania Constitutional Requirement That Each County Be Given One Representative Regardless of Population Is Invalid.

1. *The Representative Districts Are Grossly Disproportionate.*

In *Reynolds v. Sims*, 84 S. Ct. 1362, 1385 (1964), this Court stated:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both Houses of a bicammeral state legislature must be apportioned on a population basis."

There can be no question that the Pennsylvania House of Representatives created by the House Apportionment Act does not comply with this requirement. The three-judge District Court made specific findings which demonstrate conclusively the gross disparities of population within various representative districts in Pennsylvania.

Under the Representative Apportionment Act, there are counties in which legislators represent as many as 18 times the number of persons represented by legislators

from other counties. For example, six counties—namely, Clearfield with a population of 81,534; Armstrong with a population of 79,524; Centre with a population of 78,580; Crawford with a population of 77,956; Somerset with a population of 77,450; and Indiana with a population of 75,366, are assigned only one representative each, or a total of six representatives for an aggregate population of 470,410. Six other counties—namely, Forest with a population of 4,485; Sullivan with a population of 6,251; Cameron with a population of 7,586; Pike with a population of 9,158; Fulton with a population of 10,597; and Juniata with a population of 15,874, are also assigned one representative each, or a total of six representatives for an aggregate population of 53,951 (Findings of Fact 38-39, J. S. A57-58).[5]

The above findings illustrate dramatically the population disparities which exist as a result of the House Apportionment Act. In addition, the Court found that the counties which are under-represented in the House of Representatives are primarily the densely populated or urban and suburban counties. On the other hand, the counties which are over-represented in the House are primarily the sparsely populated or rural counties, although certain rural counties are under-represented. Moreover, certain over-represented rural counties adjoin under-represented counties (Findings of Fact 40-42, J. S. A58).

A finding was also made that, when the vote is considered by subdivisions within the counties, districts with a combined population of 4,887,887 or 43.2% of the total population of the State elect 105 representatives, a majority of the House (Findings of Fact 45, J. S. A59).

In *Reynolds v. Sims*, 84 S. Ct. 1362 (1964), this Court held that the apportionment plan for the Alabama House of Representatives adopted by the district court whereby

5. All page references preceded by the letters "J. S." are to Appellants' Jurisdictional Statement.

43% of the population could elect a majority of the House and whereby the maximum population—variance ratio was 4.7-to-1 was invalid. Clearly, the apportionment of the Pennsylvania House of Representatives whereby 43.2% of the people can elect a majority of the representatives and the maximum population—variance ratio is 18-to-1 is far more inequitable than is the apportionment of the Alabama House considered in *Reynolds*.

2. *The Court Below Fully Respected Political Boundaries.*

Appellants charge the lower court with requiring the disregard of county political lines in the construction of representative districts (J. S. 18). This is unfounded because the court below expressly recognized the existence of the county as a governmental unit and territorial focus for a community of interests (229 F. Supp. 310, 319, J. S. A24). The court concluded, however, that the great population disparities in the representative districts created by the House Apportionment Act are compelled by the provision in Article II, § 17 of the Pennsylvania Constitution which guarantees each county, regardless of population, at least one representative and in order to reduce these disparities ruled that a county with a population of less than one-half of a ratio could not be entitled to separate representation. The Court stated (229 F. Supp. 310, 324, J. S. A32):

> "The defendants urge that county lines should be respected and we have agreed in general with that proposition. We agree . . . . that the use of the county as a unit of representation will not run afoul of the equal protection clause to the extent that such use may involve departing from strict equality of representation. But we think that the disparities which result must operate in a purely random and unpremeditated way, and must not exceed or fall short of, as the results of a particular census may dictate, the statewide ratio population by more than a major fraction."

This conclusion clearly is merited by this Court's decisions in *Reynolds v. Sims*, 84 S. C. 1362 (1964) and *WMCA, Inc. v. Lomenzo*, 84 S. Ct. 1118 (1964),[6] wherein state constitutional and statutory provisions embodying similar guarantees of one representative for each county regardless of population were held to be invalid. Obviously, such a guarantee, even when contained in a state constitution, cannot justify population imbalance and insulate a discriminatory apportionment scheme from the mandate of the Equal Protection Clause.

Although this Court indicated that states can depart from the requirement of mathematical exactness in order to recognize political subdivisions, such a deviation from representation according to population is valid only "so long as the resulting apportionment was one based substantially on population and the equal population principle was not diluted in any significant way." *Reynolds v. Sims, supra* at 1390. Where representative districts vary in population from 8 to 18 times, the equal-population principle is diluted in a significant way. Such palpable discrimination cannot be permitted in the guise of preserving separate representation for each county. As this Court stated in *Reynolds v. Sims, supra* at 1391:

> "However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result in many States, in a total subversion of the equal-population principle in that legislative body."

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6. See also *Nolan v. Rhodes*, 84 S. Ct. 1906 (1964) (Ohio) and *Hill v. Davis*, 84 S. Ct. 1918 (1964) (Iowa), which also involved apportionment schemes guaranteeing one representative per county.

B. The Pennsylvania Constitutional Device for Allocation of Additional Representatives Also Is Invalid.

The gross population disparities in the representative districts compelled by the constitutional requirement of at least one representative per county, although sufficient in and of themselves to justify the invalidation of the legislation, do not complete the discriminatory pattern of the House apportionment scheme. There is also discrimination in the allocation of representatives to counties entitled to more than one representative.

Under Article II, § 17 of the Pennsylvania Constitution, where a county is entitled to more than one representative, those counties with fewer than five full ratios receive an additional representative for each full ratio and for each remaining fraction of a ratio exceeding one-half; on the other hand, counties containing five or more ratios receive an additional representative only for each full ratio.

As applied to the House Apportionment Act, this provision results in the under-representation of two densely populated urban counties. Allegheny County with a population of 1,628,587, equal to 28.78 representative ratios, is assigned only 28 representatives; Delaware County with a population of 553,154, equal to 9.77 representative ratios, is assigned only 9 representatives. Neither of these counties receives an additional representative for its .78 and .77 of a ratio, respectively. On the other hand, *six counties*: Beaver with a population of 206,948, equal to 3.66 representative ratios; Cambria with a population of 203,283, equal to 3.59 representative ratios; Chester with a population of 210,608, equal to 3.72 representative ratios; Franklin with a population of 88,172, equal to 1.56 representative ratios; Lebanon with a population of 90,853, equal to 1.61 representative ratios; and Northampton with a population of 201,412, equal to 3.56 representative ratios, *are each assigned additional representatives for their fractions of*

a representative ratio, all of which are less than the fractions in Allegheny and Delaware Counties (Findings of Fact 45, J. S. A59).

The court below held this provision to be invidiously discriminatory

> "since its only possible purpose and effect is to reduce the number of representatives allotted to the more populous counties below what it would be on a proportional basis, and thereby to increase the representation accorded to the people of the more sparsely populated rural counties above the basis." (229 F. Supp. 310, 325, J. S. A34)

There is no justification under the Equal Protection Clause for such a discriminatory provision which arbitrarily deprives the voters of two counties of additional representatives. In condemning this particular provision of the Pennsylvania Constitution providing for the allocation of additional representatives, the court below anticipated correctly the function subsequently assigned to it in *Reynolds v. Sims*.

> "Lower courts can and will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation." (84 S. Ct. at 1390)

C. The Commonwealth's Remaining Arguments Are Fallacious.

Appellants attack the lower court's opinion on the grounds that the court, in concluding that invidious discrimination exists, based its decision upon *population* figures and not upon "*voting characteristics*"—apparently, voting registration figures (J. S. 17-18). This distinction was not presented or argued in the court below. Upon

analysis it is no less fallacious than the other arguments presented by appellants. If one examines the voting registration of those representative districts in which the greatest disparity of population exists, the maximum population—deviation ratio is not significantly reduced. The ratios still are grossly disproportionate and, thu , unconstitutional. Somerset County has 39,562 registered voters; Armstrong County, 38,853; Clearfield County, 37,132; Indiana County, 36,283; Centre County, 30,074; and Crawford County, 32,400. All of these counties receive one representative each. Forest County has 2,622 registered voters; Sullivan County, 3,507; Cameron County, 3,820; Pike County, 6,648; Fulton County, 5,042; and Juniata County, 8,524 (J. S. C8-C10). These counties similarly receive one representative each. The maximum voter registration-deviation ratio is 15.1-to-1. Therefore, the Commonwealth has no basis for urging that there is any substantial difference between population figures and voter registration figures.

The Commonwealth also argues that the discrimination in the House of Representatives is insignificant, because the changes suggested by the court below "would affect only 6 percent of the membership of the House" (J. S. 16). This argument totally misconstrues the mandate of the Equal Protection Clause. In determining whether there is invidious discrimination in a particular legislative apportionment plan, the question is not what effect a proper apportionment plan would have upon the *composition* of the particular *legislative body* involved. The question rather is what effect such a scheme would have upon the *people involved*. The *members* of the *Pennsylvania House of Representatives* are not the victims of discriminatory apportionment. The *people of Pennsylvania* are.

II. The Lower Court's Decision With Regard to the Pennsylvania Senatorial Apportionment Act Is Correct.

A. This Court Need Not Pass Upon the Validity of the Senatorial Apportionment Act.

There can be no question that the decision of the lower court with regard to the apportionment of the Pennsylvania House of Representatives should be affirmed on the basis of this Court's decision in *Reynolds v. Sims*, 84 S. Ct. 1362 (1964). For this reason alone this Court need not review the questions presented with regard to the Senate. *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 84 S. Ct. 1472 (1964), affirmed the decision of the three-judge District Court for Colorado where it appeared that the lower court had correctly invalidated the apportionment of the Colorado Senate. This Court did not pass upon the validity of the apportionment of the Colorado House of Representatives, concluding (84 S. Ct. at 1485):

> "We need not pass on this question, since the apportionment of Senate seats, under Amendment No. 7, clearly involves departures from population-based representation too extreme to be constitutionally permissible, and there is no indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable."

Since there is likewise no evidence that the Pennsylvania legislation is severable, this Court need not pass upon the apportionment of the Pennsylvania Senate.

B. The Senatorial Districts Are Grossly Disproportionate.

Should the Court decide to consider the validity of the Senatorial Apportionment Act, it is clear that the decision of the court below relative to the Pennsylvania Senate is correct.

The Court below specifically found that the Senatorial Apportionment Act creates senatorial districts which contain widely varying numbers of people. In some instances, a senator elected from one senatorial district will represent in excess of two and one-half times the number of persons who will be represented by a senator elected from another senatorial district. For example, the 10th District consisting of Bucks County with a population of 308,567; the 20th district consisting of Luzerne County with a population of 346,972; and the 39th District consisting of Westmoreland County with a population of 352,629, will each be represented by one senator. On the other hand, the 14th District consisting of Carbon, Monroe, Pike and Wayne Counties with a population of 129,851; the 36th District consisting of Somerset, Bedford and Fulton Counties with a population of 130,498; the 33rd District consisting of Franklin and Adams Counties with a population of 140,078; the 48th District consisting of Elk, Forest, Clarion and Venango Counties with a population of 144,516; and the 23rd District consisting of Tioga, Bradford, Susquehanna, Sullivan and Wyoming Counties with a population of 147,740 respectively, each will be represented by one senator also (Findings of Fact 15-17, J. S. A50-51).

Furthermore, certain over-represented, sparsely populated or rural districts adjoin under-represented, densely populated or urban districts. For example, the 14th and 23rd Districts which were over-represented adjoin the 20th District which is under-represented; and the 36th District which is under-represented adjoins the 39th District which is over-represented (Findings of Fact 18, J. S. A51). The Court below further found that 44.6% of the total population of Pennsylvania can elect a majority of the Senate (Findings of Fact 19, J. S. A51).

The degree of disproportion which exists in the Pennsylvania senatorial districts clearly violates the requirement that the Senate be apportioned on a population basis.

In *Reynolds v. Sims*, 84 S. Ct. 1362, 1382 (1964), this Court stated:

> "And, if a State should provide that the votes of citizens in one part of the State should be given *two times*, or five times, or ten times, *the weight of votes of citizens in another part of the State*, it could hardly be contended that the right to vote of those residing in the disfavored areas have not been effectively diluted." (Emphasis added.)

Moreover, in *WMCA, Inc. v. Lomenzo*, 84 S. Ct. 1418 (1964), this Court declared that New York Constitutional provisions which could create a Senate with a maximum population variance ratio of 2.6-to-1 were invalid. Thus, under the mandate for equality set forth by this Court, the Pennsylvania Senatorial Apportionment Act clearly is invalid for this reason alone.

C. The Constitutional Limitation on the Maximum Number of Senators Which Any County Can Receive Is Invalid.

As with the House, the population disparities in senatorial districts do not exhaust the discriminatory elements of the legislative apportionment scheme. In addition, Philadelphia County with a population of 2,002,512 or 8.85 senatorial ratios, is assigned only eight senators, as compared with the counties comprising the 14th, 23rd, 25th, 27th, 33rd, 34th, 36th and 48th Senatorial Districts, having a combined population of 1,170,290 or 5.17 ratios, which also are assigned eight senators (Findings of Fact 21, J. S. A51). This limitation on the senators allocated to Philadelphia is compelled by the provision of Article II, § 16 of the Pennsylvania Constitution which prohibits any county or city from having more than one-sixth of the total number of senators. Since the total number of senators is 50, this clause limits any county to a maximum of eight sena-

tors no matter how many persons it contains (Findings of Fact 30, A53).

The Court below concluded that the Senatorial Apportionment Act was discriminatory both in the disproportionate representation in the senatorial districts and in the limitation on the number of senators allocated to Philadelphia. Relying upon history, the court found the discriminatory provisions to have been motivated by an antiquated and repudiated political philosophy (229 F. Supp. 310, 325, J. S. A23).

> "It seems clear from the debates in the convention which produced the present Pennsylvania constitution that the provisions restricting representation of the more populous counties were the product of an agrarian philosophy which held that the inhabitants of the rural areas were more to be trusted with the responsibilities of government than the population of the cities, which contained a greater proportion of wicked and irresponsible men, as was said to be well known. *The defendants concede that the desire to protect the rural voters from domination by urban majorities was the basis for these restrictive provisions and they urge their validity.* We think, however, that they are but the vestigial remnants of an undemocratic philosophy of an earlier age, and that they cannot stand against the mandate of the Fourteenth Amendment that all persons, and not rural dwellers only, shall be given the equal protection of the laws." (Emphasis added.)

The lower court's determination is in harmony with the opinions of this Court which reject deviation from representation based on population, because of economic or geographic reasons. As this Court stated in *Reynolds v. Sims, supra* at 1382:

> "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or

economic interests. . . . Weighing the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable."

III. The Lower Court's Decision With Regard to the Multi-Member Districts Allocated by the House Apportionment Act Is Correct.

For the reasons stated above with regard to the Pennsylvania Senate (*supra*, p. 15) this Court need not pass upon the validity of that aspect of the House Apportionment Act relating to multi-member districts. It is a traditional canon of constitutional interpretation that this Court will not decide constitutional questions unnecessary to the disposition of a case. See *Ashwander v. TVA*, 297 U. S. 288, 341 (1936) (concurring opinion of Brandeis, J.). Should this Court, nevertheless, pass on the question, the Court below clearly was correct in its decision relating to multi-member districts.

The lower court found that the House Apportionment Act sets up a "curious pattern of representative districts in the larger counties" (229 F. Supp. 310, 326, J. S. A36). The court further found that in Philadelphia County there are 18 single-member districts, seven two-member districts and one three-member district. In Allegheny County there are eight single-member districts, five two-member districts, two three-member districts, and one four-member district. The court also found that "these varying districts follow no logical or consistent pattern" (Findings of Fact 58, J. S. A61).

The court further found that for no rational reason three adjoining counties with common geographic and socio-economic conditions and a largely homogeneous population are subdivided in a different manner. Berks County is subdivided into five single-member districts. Lancaster County is divided into one single-member and one four-member district. And York County is subdivided into four

single-member districts (Findings of Fact 63, J. S. A63). These are but isolated examples of the total "curious pattern."

The court observed that appellants offered no explanation for this crazy-quilt pattern (229 F. Supp. 310, 326, J. S. A38).

> "In the absence of any legislative history or other explanation justifying it, and we have found none, we can only conclude that this districting is either the result of gerrymandering for partisan advantage, as was suggested at the hearing, or that it is wholly arbitrary and capricious."

The court's specific findings that these districts follow no logical or consistent pattern; that they give certain voters greater voting power and influence in the legislative process than others; that they discriminate against political minorities; and that there is no rational basis either for the existence of the multi-member districts themselves or for the random manner in which they have been allocated among the Counties indisputably justify the court's conclusion that the provisions for such districts in the Representative Apportionment Act are invalid (see Findings of Fact 58-61, 79, J. S. A61-63, A65). The arbitrary and irrational classifications perpetrated in the multi-member districting violates the traditional requirements of the Equal Protection Clause as enunciated in *Reynolds v. Sims*, 84 S. Ct. 1362, 1383 (1964), where this Court stated:

> "And the concept of equal protection has been traditionally viewed as *requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged.* With respect

---

7. For other cases involving the same point see, *e.g.*, *Phillips Chemical Co. v. Dumas Independent School District*, 361 U. S. 376 (1960) (Tax Measure); *F. S. Royster Guano Co. v. Virginia*, 253 U. S. 412 (1920) (Tax Measure); *Morey v. Doud*, 354 U. S. 457 (1957) (Regulation of Currency Exchange); *Skinner v. Oklahoma*, 316 U. S. 535 (1942) (Sterilization of Habitual Criminals).

> to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment." (Emphasis added.)

Appellants rely upon dictum of this Court in *Reynolds v. Sims*, 84 S. Ct. 1362, 1389 (1964), which they contend recognizes the validity of multi-member districts. It is clear, however, that this Court merely was discussing theoretical possibilities wherein bicameral legislatures would have different compositions. Certainly this general theoretical language could hardly be construed to place the stamp of approval upon the curious and arbitrary pattern of multi-member districting involved in this case.

Moreover, it is clear from the opinion in *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 84 S. Ct. 1472 (1964) that lower courts and not this Court should have the primary responsibility for ascertaining the validity or invalidity of multi-member districts. Cf. *Reynolds v. Sims*, 84 S. Ct. 1362, 1390 (1964). The lower courts have a more intimate knowledge of the historical and political panorama of the states in which multi-member districts must be appraised. Thus they can bring to bear on the problem the familiarity with local conditions which will enable them to pierce the legislative haze that envelops voter discrimination.

If the opinion of the court below manifests one thing, it is an extraordinary grasp of the political situation in Pennsylvania and an incisive understanding of the course that Pennsylvania reapportionment should follow. The three-judge District Court has made clear findings that the Representative Apportionment Act has allocated the multi-member districts in an irrational, arbitrary, and partisan manner (Findings of Fact 58-70, J. S. A61-65). These findings should not be disturbed.

CONCLUSION.

Appellees respectfully submit that Appellants present no substantial questions for the decision of this Court, and that the judgment and decree of the District Court should be affirmed.

MARVIN COMISKY,
Counsel for Appellees,
Ira Walton Drew, et al.

Of Counsel:

GONCER M. KRESTAL,
BLANK, RUDENKO, KLAUS & ROME,
1660 Suburban Station Building,
Philadelphia, Pennsylvania. 19103.

THOMAS D. MCBRIDE,
BERNARD M. BORISH,
Counsel for Appellees,
Michael Johnson, et al.

Of Counsel:

HERBERT W. YANOWITZ,
WOLF, BLOCK, SCHORR & SOLIS-COHEN,
12th Floor Packard Building,
Philadelphia, Pennsylvania. 19102.

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BRIEF IN OPPOSITION TO MOTION TO AFFIRM

EDWARD FRIEDMAN
Deputy Attorney General
ALAN MILES RUBEN
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellants

Department of Justice
Capitol Building
Harrisburg, Pennsylvania

Morrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

INDEX

	Page
Argument:	
I. The apportionment of the Pennsylvania House of Representatives comports fully with the requirements of the Fourteenth Amendment as expounded in the recent decisions of this Court	2
II. The composition of the Pennsylvania House of Representatives based upon both single and multi-member districts fully comports with the requirements of the Fourteenth Amendment as expounded in the recent decisions of this Court	6
III. The apportionment of the Pennsylvania Senate comports fully with the requirements of the fourteenth Amendment as expounded in the recent decisions of this Court	9
IV. The constitutionality of the Pennsylvania Senatorial Apportionment Act and of the provisions of the Pennsylvania House Apportionment Act relating to multi-member districts are necessarily at issue in this appeal	12
Conclusion	14
Appendix A—Brief in Opposition to Application for Remand	15

TABLE OF CITATIONS

Cases:	
Lucas v. Forty-Fourth General Assembly of State of Colorado, 84 S. Ct. 1472 (1964)	12
McGowan v. Maryland, 366 U.S. 420 (1961)	8
Metropolitan Casualty Ins. Co. v. Brownwell, 294 U.S. 580 (1935)	8

Reynolds v. Sims, 84 S. Ct. 1362 (1964) 7, 16, 17, 19

CONSTITUTIONS:

Constitution of the Commonwealth of Pennsylvania, Article II, Section 17 6

Constitution of the United States of America: Fourteenth Amendment 2, 6, 9, 15

MISCELLANEOUS:

David and Eisenberg, State Legislative Redistricting, 19, 22 (September 10, 1962) 7

Case Caption

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BRIEF IN OPPOSITION TO MOTION TO AFFIRM

ARGUMENT

I. THE APPORTIONMENT OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES COMPORTS FULLY WITH THE REQUIREMENTS OF THE FOURTEENTH AMENDMENT AS EXPOUNDED IN THE RECENT DECISIONS OF THIS COURT

Appellees have here focused their attack upon the Pennsylvania Constitutional requirement that each county be represented by at least one member in the House of Representatives and the restriction that counties entitled to at least five representatives may be allotted additional members only for additional full "ratios of population". From these provisions the Appellees have calculated a list of mathematical monstrosities showing that one legislator represents 18 times as many constituents as another and that 43.2 percent of the State's population (unrefined for voting qualifications), could elect a majority of the House. Moreover, the Appellees see in these alleged inequalities a pattern of under-representation of the densely populated, urban and suburban counties and over-representation of the sparsely populated, rural counties.

The image conjured by Appellees is just that—a phantom without the substance of reality.

Argument

Quotation of selected population representative ratios gives little indication as to whether the electoral process has been distorted in any substantial manner. The constitutionally crucial issue is whether groups of voters are significantly over or under-represented in the General Assembly.

The House of Representatives of the General Assembly of the Commonwealth of Pennsylvania is structured in accordance with the population principle, subject to permissible minor deviations, and fairly meets the constitutional requirements established by this Court.

54 of Pennsylvania's 67 counties, with a combined population of 11,109,002 of the State's total population of 11,319,366, and with a combined membership of 196 of the House's total membership of 209, have been so fairly apportioned that, with but one exception, the average population per representative is within 2,000 of the mathematically exact "representative ratio" of 56,597 obtained by dividing the Commonwealth's population by 200. The sole exception is Delaware County, where the average population for its nine representatives is 4,864 above the representative ratio (Jurisdictional Statement A31).

The remarkable equality of the distribution of representatives among the counties is highlighted by the fact that the District Court, in constructing its own representative districts, sanctioned population deviations of as much as 13,622 from the representative ratio (Jurisdictional Statement A33).

Appellees' real quarrel is with the allotting of one representative to each of the 13 remaining counties whose combined population would, in the absence of the constitutional guarantee, entitle them to less than half as many

members. But these counties account for only six percent of the membership of the House of Representatives, and the approximately three percent over-representation which their inhabitants enjoy is too negligible to constitute a constitutionally impermissible dilution of the representation rights of the rest of the State.

Considering that the two largest and most urban counties, Philadelphia and Allegheny, alone have a total of 63 representatives—almost five times as many as the 13 smallest, rural counties put together—it can readily be seen that the Pennsylvania constitutional allowance of one representative per county has not in any meaningful sense interfered with the integrity of the electoral process and the principle of representation based upon population.

Neither has the Pennsylvania constitutional limitation that counties having five or more ratios of population are entitled to an additional representative only for each additional full ratio worked any mischief.

Two counties are said to be affected thereby. Allegheny County, with a population equal to 28.78 representative ratios, is allegedly discriminated against by being assigned only 28 representatives. Delaware County, with a population equal to 9.77 representative ratios, is declared to be similarly injured by being allotted only 9 representatives. This situation is contrasted with that obtaining in six other counties, four urban and two predominantly rural, each of which receives additional representation for a major fraction of a representative ratio.

From the standpoint of a 209 member House, the failure to accord these two counties one additional representative each, so that Allegheny might have 29 and Delaware 10, is too insubstantial to warrant the overthrow of the

House of Representatives as presently apportioned and constituted.

We need not dwell here upon the fiction that the apportionment of the House is a disguised attempt to perpetrate rural, minority control over an urban majority. Each urban county receives representation in each branch of the General Assembly substantially equal to its proportion of the State's total population. (See Jurisdictional Statement, C1-C3.) But a word must be said about what inference is to be drawn from the fact that it is mathematically conceivable that less than a majority of the population (if not of the electorate), of Pennsylvania could choose a majority of the members of the House. The arithmetic is meaningless except as a theoretical exercise because there is no such cohesive minority tied together by any shared characteristic. And, in point of fact, the nine largest and most heavily urban counties which contain 55.2 percent of the Commonwealth's population elect a majority of the members of the House (Jurisdictional Statement, A27-A28).

II. THE COMPOSITION OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES BASED UPON BOTH SINGLE AND MULTI-MEMBER DISTRICTS FULLY COMPORTS WITH THE REQUIREMENTS OF THE FOURTEENTH AMENDMENT AS EXPOUNDED IN THE RECENT DECISIONS OF THIS COURT

The conclusion of the court below, now supported by the Appellees, was that the "mix" of multi-member[1] and single-member districts in the House was not "justified" by appropriate explanation from Appellants and therefore constituted arbitrary and irrational classification violative of the Equal Protection Clause (Motion To Affirm, p. 21).

This contention is founded upon the assumption that single-member and multi-member districts are not interchangeable, one for the other, and that voters in the one type of district either have an advantage over or suffer detriment in comparison with voters in the other type of district. Aside from the arm-chair philosophizing of a professor of political science, there is no evidence whatsoever to support this view. Appellants maintain that the right of franchise is entirely unaffected by the circumstance of

[1] Under Article II, Section 17, of the Pennsylvania Constitution, no more than four representatives can be elected from any multi-member district. Under the Representative Apportionment Act there are 29 two-member districts, five three-member districts and five four-member districts (Jurisdictional Statement, A61).

whether it is to be exercised in the context of a multi-member or a single-member district.

As this Court said in *Reynolds:*

> "One body could be composed of single-member districts while the other could have at least some multi-member districts." 84 S. Ct. at 1389.

Even assuming that there is something of significance to be gained or lost by the voter from the choice of district, the District Court's conclusion that the classification scheme devised by the Legislature was arbitrary cannot be sustained.

Not only is there no evidence in the record that areas similar with respect to all significant factors were classified dissimilarly, but, on the contrary, Appellees' own academician pointed to at least one factor which could "justify" the difference in treatment—relative ease of communication and transportation (N.T. Hearing, January 17, 1964, pp. 132-141).

The intangible factors underlying the legislative choice between single-member and multi-member districts are often subtle and based more upon a representative's "feel" of the situation gained from years of political experience and insight into the operations of his district than upon objective criteria. Such exercise of discretion, however, based upon "expertise" in the political arts, ought not to be disturbed. See David, and Eisenberg, *State Legislative Redistricting*, 19, 22 (September 10, 1962).

In substituting its judgment for that of the Legislature, the District Court ignored the principles enunciated

by this Court that a statutory classification "will not be set aside if any set of facts reasonably may be conceived to justify it", *McGowan v. Maryland*, 366 U.S. 420, 426 (1961), and that "the burden of establishing the unconstitutionality of a statute rests on him who assails it". *Metropolitan Casualty Ins. Co. v. Brownwell*, 294 U.S. 580, 584 (1935).

III. THE APPORTIONMENT OF THE PENNSYLVANIA SENATE COMPORTS FULLY WITH THE REQUIREMENTS OF THE FOURTEENTH AMENDMENT AS EXPOUNDED IN THE RECENT DECISIONS OF THIS COURT

Appellees mount the same mathematical attack upon the composition of the Senate as they did upon the composition of the House, relying upon mechanical application of population senator ratio data. The assault comes with diminished force, however, since the alleged disparities do not loom as large. Thus, the most glaring disparity that Appellees can offer is that a senator from one district may represent two and a half times the number of persons represented by a senator from another. And, with respect to the issue of rural, minority control, it is said to take 44.6 percent of the total population of Pennsylvania to elect a majority of this branch of the General Assembly.

These alleged inequities are laid at the door of the Pennsylvania constitutional prohibition upon any county being allocated more than eight senators and the limitation that a county entitled to more than one senator may obtain an additional senator only if its surplus of population over its full ratios exceeds three-fifths of a ratio.

The compass of the asserted malapportionment is very narrow indeed. It amounts to no more than this: the 48 smallest counties of the State are over-represented by three senators at the expense of the counties of Philadelphia, Westmoreland and Luzerne, each of which should receive an additional senator (Jurisdictional Statement A21).

Philadelphia County, containing 17.6 percent of the State's population, elects 16 percent of the Senate. Luzerne County, in which 3.065 percent of the Commonwealth's population resides, is represented by two percent of the membership of the Senate. Westmoreland County, which contains 3.105 percent of Pennsylvania's inhabitants has been allocated two percent of the seats in the Senate (Jurisdictional Statement C2-C3). Appellants contend that the asserted imbalances in senatorial representation are not so substantial as to require the recomposition of that body.[2]

The use of a three-fifths ratio for additional senatorial representation rather than a simple majority fraction is neither arbitrary nor invidious. The choice of the higher fraction was made in order to avoid an even greater grouping of smaller counties which would unduly broaden the geographical area represented by each senator in multi-county districts. Nothing in the Fourteenth Amendment authorizes the adoption of the so-called "majority fraction rule" or, for that matter, any fraction less than a full ratio for purposes of apportioning the Senate.

Appellees cannot avoid the fact that the 11 largest urban counties containing approximately 59 percent of the total population of the State elect a majority of the Senate. And, when all 18 counties which contain large, urban and suburban areas, each of which have populations in excess of 200,000, are considered, it appears that 70.3 percent of the total population of the State elects 70.2 percent of

[2] Further, it should be noted that none of these three counties was the target of discriminatory under-representation in the House of Representatives.

the Senate (Jurisdictional Statement A14-A16). Compliance with the population principle requires no more perfect equality of representation.

IV. THE CONSTITUTIONALITY OF THE PENNSYLVANIA SENATORIAL APPORTIONMENT ACT AND OF THE PROVISIONS OF THE PENNSYLVANIA HOUSE APPORTIONMENT ACT RELATING TO MULTI-MEMBER DISTRICTS ARE NECESSARILY AT ISSUE IN THIS APPEAL

Appellees urge that in view of the alleged invalidity of the House Apportionment Act, this Court "need not pass upon the apportionment of the Pennsylvania Senate" because there is "no evidence that the Pennsylvania legislation is severable".

Appellees' contention is apparently based upon a misreading of *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 84 S. Ct. 1472, 1458 (1964). The Colorado Legislature in 1963 had enacted a single statute reapportioning both the House of Representatives and the Senate. 84 S. Ct. at 1481, n. 15. Holding that the apportionment of Senate seats was constitutionally impermissible, this Court refused to consider the House apportionment in the absence of an "indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable". 84 S. Ct. at 1485.

The abstention in *Lucas* can have no relevance to the instant appeal. The "Pennsylvania legislation" consists of two independent acts separately adopted by the General Assembly and separately signed into law by the Governor. (See Jurisdictional Statement B4, B27.) The Appellees'

monologue about "severability" is, thus, without meaning. There is nothing to sever.

The Appellees also ask this Court to refrain from considering the constitutionality of the provisions of the Pennsylvania House Apportionment Act establishing multi-member districts. This request is delivered "for the reasons stated * * * with regard to the Pennsylvania Senate" (sic) (Motion To Affirm, p. 20). But here on the issue of severability Appellees are confronted with the clear mandate of the General Assembly that "the provisions of every law shall be severable". Statutory Construction Act of May 28, 1937, P.L. 1019, Art. IV, Section 55, Pa. Stat. Ann., tit. 46, §555 (Purdon 1952).

The District Court held that a legislative body cannot be constructed of both single-member and multi-member districts, at least not unless "justified" by appropriate explanation (229 F. Supp. at 326, Jurisdictional Statement A38).

Thus, were the court below upheld in its judgment that population disparities invalidate the present apportionment of the House of Representatives, its ruling with respect to multi-member districts would be obligatory in the framing of a new apportionment plan. Patently, therefore, this issue must necessarily be considered by this Court in the disposition of the present appeal.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Appellees' Motion To Affirm be denied.

Respectfully submitted,
EDWARD FRIEDMAN,
Deputy Attorney General,
ALAN MILES RUBEN,
Deputy Attorney General,
WALTER E. ALESSANDRONI,
Attorney General,
Counsel for Appellants.

Department of Justice
Capitol Building
Harrisburg, Pennsylvania

APPENDIX A

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 201

WILLIAM W. SCRANTON, Governor et al., *Appellants*

v.

IRA WALTON DREW et al., *Appellees*

On Appeal from the United States District Court for the Middle District of Pennsylvania.

BRIEF IN OPPOSITION TO APPLICATION FOR REMAND

On April 9, 1964, the District Court entered its judgment, *inter alia*, declaring the Pennsylvania Apportionment Laws and the provisions of the State Constitution under which they were enacted violative of the Fourteenth Amendment to the Federal Constitution and enjoining Appellants from conducting both the 1964 legislative primary and general elections thereunder.

Promptly thereafter, Appellants moved for a stay of the District Court's order pending disposition of its prospective appeal to this Court.

After exhaustive argument by counsel and full consideration by the District Court, Appellants' motion was granted and a stay entered on April 14, 1964. The order provided:

> "* * * the stay hereby granted shall continue in effect pending the final determination of such appeal and until the receipt by this court of the mandate of the Supreme Court with respect thereto."

In the instant Application Appellees seek to have the record remanded "with instructions to the three-judge court to consider vacation of the stay heretofore granted and the grant of such further relief as may be appropriate and thereafter to return the said record to this Court for final disposition of the appeal". The Application is thus a thinly camouflaged attempt to obtain reargument of the District Court's order staying its injunction.

Nothing in *Reynolds v. Sims*, 32 L.W. 4535, and companion cases obviates the necessity for hearing the present appeal, nor do the opinions in any way resolve the unique issues raised herein.

On the contrary, as Chief Justice Warren observed in *Reynolds:*

> "For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one State may be

unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. Cf. Slaughter-House Cases, 16 Wall. 36, 78-79. Thus, we proceed to state here only a few rather general considerations which appear to us to be relevant." 32 L.W. 4547-4548

Moreover, contrary to the discriminatory legislative apportionments existing in Alabama *et al.*, whatever deviations from the Equal-Population Principle exist under the Commonwealth's present representational framework are clearly insubstantial (see Jurisdictional Statement, pp. 15-18), and, even these deviations are plainly permissible as valid accommodations of the interest of the State in preserving the county as the basic representational unit.

Again, referring to Chief Justice Warren's opinion in *Reynolds:*

"Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. To do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population

principle was not diluted in any significant way. Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting."

• • • • • • •

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."

• • • • • • •

"So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature."

"A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of

population among districts is maintained." 32 L.W. 4547, 4548

If the *Reynolds* opinion is in any way controlling on this appeal, it is with respect to that portion of the opinion of the court below which declares invalid the provisions of the Pennsylvania Apportionment Laws establishing both single and multi-member representative districts. That the District Court erred in so holding is manifest from the following passage of the Chief Justice's opinion:

> "One body could be composed of single-member districts while the other could have at least some multi-member districts." 32 L.W. 4547

The equitable considerations which motivated the District Court's grant of a stay in these proceedings remain as potent as they were three months ago, and, indeed, with the passage of time, have heightened cogency. Nominations have been filed, primaries have been held, candidates selected and the general election campaign has already commenced. To halt the electoral machinery and fabricate a new apportionment scheme for the General Assembly operative in the forthcoming November elections would result in confusion compounded. Were this Court to grant the Appellee's Application and the District Court to take the action requested, Appellants would be obliged to request this Court to impose a supersedeas on the District Court's mandate so as to preserve political sanity and protect the rights of the Commonwealth's voters and of the candidates for legislative office.

For the foregoing reasons Appellants respectfully request that the Application for Remand be denied.

Respectfully submitted,

EDWARD FRIEDMAN
Deputy Attorney General
ALAN MILES RUBEN
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellants
Department of Justice
Capitol Building
Harrisburg, Pennsylvania

Dated: July 6, 1964

Certificate of Service

I, Alan Miles Ruben, one of the attorneys for William W. Scranton, Governor, et al., Appellants herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 6th day of July, 1964, I served copies of the foregoing Brief in Opposition to Application for Remand on the several parties thereto, by depositing copies thereof in the United States Post Office at Harrisburg, Pennsylvania, correctly addressed, with first class postage prepaid, to their respective attorneys of record at their respective post office addresses as follows:

Appendix A

To: Marvin Comisky, Esquire
1660 Suburban Station Building
Philadelphia, Pennsylvania 19103
Attorney for Ira Walton Drew,
J. Claude Bowen, John B. McCrea,
Irving Kaufman, and Jean McCoskey,
Appellees

To: Marshall J. Seidman, Esquire
Suite 1111
1420 Walnut Street
Philadelphia, Pennsylvania
Attorney for Marshall J. Seidman,
Appellee

To: Bernard M. Borish, Esquire
12th Floor, Packard Building
Philadelphia, Pennsylvania
Attorney for Michael Johnson,
Harry Block, Henry P. Groton,
Eugene Joseph Considine, and
Frederick Blair Hughes,
Appellees

Alan Miles Ruben
Deputy Attorney General
Attorney for Appellants
Department of Justice
Capitol Building
Harrisburg, Pennsylvania

SUPPLEMENT TO JURISDICTIONAL STATEMENT

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EDWARD FRIEDMAN
Deputy Attorney General
ALAN MILES RUBEN
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellants

Department of Justice
Capitol Building
Harrisburg, Pennsylvania

Murrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

INDEX

PAGE

SUPPLEMENT TO JURISDICTIONAL STATEMENT:

Argument 1

APPENDIX "A":

Opinion of Supreme Court of Pennsylvania 7

TABLE OF CASES

Butcher et al. v. Bloom et al., No. 198 Misc. Docket, September 29, 1964 ..... 1, 3, 5, 6

Reynolds v. Sims, U.S. , 84 S. Ct. 1362 (1964) 3, 5

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SUPPLEMENT TO JURISDICTIONAL STATEMENT

This Supplement to the Jurisdictional Statement is filed to bring to the Court's attention the unanimous decision of the Supreme Court of Pennsylvania in *Butcher et al. v. Bloom et al.*, No. 198 Miscellaneous Docket, September 29, 1964.[1] Therein the state tribunal held that the Pennsylvania legislative apportionment laws, at issue in this appeal, were invalid as repugnant to the Fourteenth Amendment to the Federal Constitution.

[1] The opinion is printed as Appendix "A" hereto.

However, in reaching this conclusion the State Supreme Court concluded:

"It is obvious that the Pennsylvania Legislature cannot properly act to reapportion itself in the short time remaining before the election of November 3, 1964, and months after the April 28, 1964 primary election. We do believe, however, that the Legislature made an earnest effort to reapportion itself in 1963. Unfortunately, it was then without the benefit of the views of the Supreme Court of the United States expressed in the *Reynolds* cases and without an interpretation by this Court of important and relevant provisions of the Pennsylvania Constitution. Serious disruption of orderly state election processes and basic governmental functions would result from immediate action by any judicial tribunal restraining or interfering with the normal operation of the election machinery at this late date. The Legislature should not be denied a reasonable opportunity to enact new reapportionment legislation. We therefore hold that the 1964 election of Pennsylvania legislators should and must be conducted pursuant to the Acts of January 9, 1964, Nos. 1 and 2.[19] Under no circumstances, however, may the 1966 election of members of the Pennsylvania Legislature be conducted pursuant to a constitutionally invalid plan." (A 29-30.)

* * * * * * * * *

"Should the Legislature fail to enact a constitutionally valid plan of reapportionment as soon as practical, but not later than September 1, 1965, we shall

[19] Footnote omitted.

take such action as may be appropriate in light of the then existing situation." (A 39-40.)

Appellants have previously shown in their Jurisdictional Statement and Reply Brief that the District Court's decision and suggested apportionment scheme is inconsistent with the principles set down by this Court in *Reynolds* and companion cases; it now appears that the District Court's thinking is also out of tune with the interpretation of the provisions of the Pennsylvania Constitution controlling apportionment of the General Assembly made by the Pennsylvania Supreme Court in *Butcher*."

It will be recalled that the District Court giving literal meaning and mandatory effect to Sections 16 and 17 of Article II of the Pennsylvania Constitution declared these provisions invalid as contravening the requirements of the Fourteenth Amendment. But the Pennsylvania Supreme Court decided:

> "Our interpretation of the relevant provisions of the Pennsylvania Constitution makes mandatory only such requirements as are in harmony with the Fourteenth Amendment to the Constitution of the United States." (A 39.)

With respect to the first of these sections, the Pennsylvania Supreme Court held:

> "It is our view that Section 16, when construed as a whole, demands that Senate apportionment legislation respect county lines and lines of other political subdivisions (such as wards, boroughs, and townships), insofar as possible, without doing violence to the population principle enunciated by the first

sentence of Section 16 and also by the Fourteenth Amendment to the Federal Constitution." (A 33.)

"We hold, therefore, that Article II, Section 16 of the Pennsylvania Constitution requires that senatorial reapportionment legislation must maintain the integrity of counties and other political subdivisions, insofar as possible, and must provide for compact districts of contiguous territory, *subject always to the overriding objective and mandate that such districts shall be 'as nearly equal in population as may be.'* We must emphasize that, if necessary, any political subdivision or subdivisions may be divided or combined in the formation of districts where the population principle cannot otherwise be satisfied. *Furthermore, the number of senators per political subdivision may not be limited if such limitation violates the equal-population principle.*" (A 33-34.) (Emphasis supplied.)

In turning to the latter section, the Court reasoned:

"It is clear that the first sentence of Section 17 is in accord with the requirements of the federal constitution. It expressly recognizes the equal-population principle as the controlling factor in apportioning the House of Representatives." (A 35.)

"The requirement that apportionment should be among the several counties further signifies an intention to respect county lines and to utilize counties as *units of representation to the maximum extent consistent with the equal-population principle.* Indeed, Section 17, when considered as a whole, demands that

the boundaries of all political subdivisions be respected when not in conflict with the overriding population principle. It must be interpreted to require that counties with small populations, if necessary, be joined with other counties for the purpose of electing and sharing a representative. *We hold that no provision of Section 17 prohibits the division or combination of counties in the formation of districts where the population principle cannot otherwise be satisfied.*" (A 35.) (Emphasis supplied.)

Well established principles of federal abstinence and deference to state jurisdiction in cases involving the interpretation of a state constitution dictate that the present controversy be resolved in the Pennsylvania tribunal pursuant to the judgment of the Pennsylvania Supreme Court in *Butcher*. Moreover, primary responsibility for the fashioning of a representational framework belongs to the General Assembly which, by virtue of its composition, experience, and facilities is the most competent and appropriate body to perform this task. As the Pennsylvania Supreme Court recomends, the Legislature ought to be given an opportunity with the benefit of this Court's decision in *Reynolds*, and the Pennsylvania Supreme Court's decision in *Butcher* to enact apportionment legislation consonant with the requirements of the Fourteenth Amendment.

Appellants believe that the decision of the Supreme Court of Pennsylvania lays down sound guidelines, as the opinion of the District Court did not, which the General Assembly may follow in drafting new apportionment legislation. For this reason Appellants herein consider themselves bound to obey the mandate of the Pennsylvania

Supreme Court in *Butcher* and Appellant George I. Bloom hereby expressly waives his right of appeal to this Court from that decision.

Appellants therefore request this Court to take jurisdiction of the present appeal, to vacate the judgment of the District Court, and to retain jurisdiction pending compliance by the Appellants and the General Assembly of Pennsylvania with the judgment of the Pennsylvania Supreme Court in *Butcher*.

Respectfully submitted,

EDWARD FRIEDMAN
Deputy Attorney General
ALAN MILES RUBEN
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellants

Department of Justice
Capitol Building
Harrisburg, Pennsylvania

APPENDIX "A"

IN THE SUPREME COURT OF PENNSYLVANIA

Middle District

No. 198 Miscellaneous Docket

Harry K. Butcher, 6069 Drexel Road, Philadelphia, Pennsylvania; Donald C. Rubel, 606 Westview Avenue, Philadelphia, Pennsylvania; and Anne D. McKinley, Apt. 293, Carl Mackley Apartments, "M" and Bristol Streets, Philadelphia 24, Pennsylvania; Citizens, Duly Qualified Electors and Taxpayers of the Commonwealth of Pennsylvania and of the City and County of Philadelphia, for themselves and for any other Taxpayers and Electors who may desire to join as parties-plaintiff,

Plaintiffs

v.

George I. Bloom, Secretary of the Commonwealth of Pennsylvania, Successor to E. James Trimarchi, Jr.,

Defendant

George T. Kelton and Jack Sirott,

Intervenors

Certiorari from the Court of Common Pleas of Dauphin County, No. 151, Commonwealth Docket, 1962

OPINION OF THE COURT

Roberts, J., Filed: September 29, 1964:

I.

At issue in this litigation is the constitutional validity, under the Fourteenth Amendment to the Federal Constitution, of the present apportionment of seats in both houses of the Pennsylvania Legislature.

On March 30, 1962, plaintiffs, Pennsylvania taxpayers and electors, filed complaints in equity in the Court of Common Pleas of Dauphin County against the Secretary of the Commonwealth. The complaints sought that defendant be restrained from taking any steps toward the holding of elections for state legislative offices under the provisions of the existing apportionments acts[1] on the ground that the acts violated certain provisions of the Pennsylvania and Federal Constitutions.[2] After an answer was filed by defendant, plaintiffs moved for judgment on the pleadings. The motion was denied on June 13, 1962. However, the Court of Common Pleas retained jurisdiction of the action, held the issues concerning reapportionment to be justiciable, and refused to adjudicate

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[1] Act of May 10, 1921, P. L. 449, as amended, 25 P.S. §2201 (pertaining to the apportionment of Senate districts); Act of July 29, 1953, P. L. 956, 25 P.S. §2215 (pertaining to the apportionment of House districts).

[2] The complaint in this action was amended on December 13, 1963, to include an attack on Sections 16 and 17 of Article II of the Pennsylvania Constitution as well as upon proposed senatorial and representative reapportionment bills pending in the Legislature. On February 4, 1964, plaintiffs filed their second amended complaint which clarified the issues raised.

them until the Legislature had an oportunity to enact appropriate legislation at its forthcoming sessions.[3] On November 12, 1963, a special session of the General Assembly was convened for the purpose of considering reapportionment legislation. Subsequently, two reapportionment bills, the Act of January 9, 1964, No. 1, P. L. , 25 P.S. §2221 (Supp. 1963), and the Act of January 9, 1964, No. 2, P. L. , 25 P.S. §2217 (Supp. 1963), were passed and approved by the Governor.[4]

On January 14, 1964, plaintiffs petitioned the Supreme Court of Pennsylvania to take immediate jurisdiction of this case, and on January 15, we granted plaintiffs' petition and issued a Special Writ of Certiorari to the Court of Common Pleas of Dauphin County. We also permitted intervention by two residents of Bucks County who filed a separate complaint averring, inter alia, that the First Legislative District of Bucks County is not compact within the meaning of Article II, Section 17, of the Pennsylvania Constitution and that they are denied fair and equal representation as required by Section 1 of the Fourteenth Amendment to the United States Constitution. On January 24, 1964, we remanded the matter to the Dauphin County court with directions to hold a hearing forthwith, to allow any pertinent amendment and any proper intervention, to make all necessary and appropriate findings of fact, and to remit its findings and report to this Court as expeditiously as possible. On March 19, 1964, after several hearings in that court, the hearing judge

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[3] *Butcher v. Trimarchi*, 28 D. & C. 2d 537 (C.P. Dauphin Co. 1962).

[4] Act No. 1 provides for apportionment of the House, Act No. 2 of the Senate.

filed a report and findings of fact. On April 7, 1964, oral argument was held before this Court.

II.

In considering this case, we are aware that a similar proceeding was instituted in the United States District Court for the Middle District of Pennsylvania on November 22, 1963.[6] On April 9, 1964, that three-judge court filed findings of fact, conclusions of law, and an opinion holding the Pennsylvania Reapportionment Acts of January 9, 1964, and certain provisions of the Pennsylvania Constitution to be violative of the Fourteenth Amendment to the Federal Constitution. Accordingly, it enjoined various state officials from conducting elections pursuant thereto. That court retained jurisdiction of the matter pending enactment of a valid reapportionment plan by the General Assembly or, in default thereof, by its own decree or in some other lawful manner. At the same time, it announced that it would reconvene in Philadelphia on June 1, 1964, to consider any further relief which might be necessary. On April 14, 1964, a stay of the federal district court order was granted pending appeal to the Supreme Court of the United States.

III.

For many reasons, we believe that we should decide the issues presented and provide necessary remedies for achieving valid reapportionment. In the presence of the demonstrated willingness of the Legislature[7] to act and the willingness of our courts to assume jurisdiction, the

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[6] *Drew v. Scranton*, 229 F. Supp. 310 (M.D. Pa. 1964), *appeal docketed*, 33 U.S.L. Week 3047 (U.S. June 19, 1964) (No. 201).

[7] See note 7, infra.

federal district court should be relieved of responsibility in this matter for a period sufficient to allow such remedies to become effective. In assuming the responsibility of securing, in a timely fashion, a reapportionment plan which would meet the requirements of the Federal and State Constitutions, we have taken literally the words of the Supreme Court of the United States: "*We applaud the willingness of state courts to assume jurisdiction and render decision in cases involving challenges to state legislative apportionment schemes.*" *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. , , 84 S. Ct. 1442, 1451-52 (1964). (Emphasis supplied.)

This suit challenges the recent Pennsylvania Reapportionment Acts and the election of state senators and representatives thereunder. More importantly, it challenges—in light of recent decisions interpreting the Constitution of the United States—the validity of certain provisions of the Constitution of Pennsylvania which establish the legislative branch of government. It presents one of the most important constitutional questions ever raised in the history of this Commonwealth. It involves the basic rights of the citizens of Pennsylvania in the election of their state law makers. Historically and logically, this Court is the most appropriate forum to determine the issues presented and to fashion suitable remedies. Proper and continuing respect for federal-state judicial relationships necessitates consideration by the Supreme Court of Pennsylvania of the relevant state statutes and state constitutional provisions, subject, of course, to review by the Supreme Court of the United States.

Furthermore, jurisdiction with respect to the matters involved was obtained by the Court of Common Pleas of

Dauphin County prior to the federal district court, and both the former court and this Court have acted diligently in light of all the circumstances of this case. After the initial complaints were filed in March, 1962, the common pleas court postponed adjudication of the issues involved in order to give the Legislature an opportunity to act at its forthcoming session. At a special session in 1963, the General Assembly enacted reapportionment legislation, and, immediately thereafter, this Court assumed jurisdiction of this case, received findings of fact and a report based on hearing before the Dauphin County court, and promptly heard argument. Meanwhile, the federal district court, denied an application for a preliminary injunction which would have restrained state officials from conducting any election for state legislative office, pending final enactment by the General Assembly of reapportionment legislation then being considered.[7] Therefore, both the federal court and the state courts postponed judicial action while awaiting the final passage of the Pennsylvania Reapportionment Acts; both acted promptly in

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[7] This case must be contrasted with *Lucas v. Forty-Fourth General Assembly of State of Colorado*, U.S. , n.3, 84 S. Ct. 1472, 1476, n.3 (1964), where the Supreme Court of the United States quoted, with approval, the position of the federal district court, which refused to abstain: "The considerations which demand abstinence are not present in the instant case. Here, the General Assembly of the State of Colorado has repeatedly refused to perform the mandate imposed by the Colorado Constitution to apportion the legislature. The likelihood that the unapportioned General Assembly will ever apportion itself now appears remote. The Supreme Court of Colorado, while retaining jurisdiction of the subject matter of the controversy presented to it, has postponed further consideration of the cause until June, 1963. Un-

their respective cases in the Spring of 1964.[8] Further immediate action by us was made unnecessary by the stay of the federal order, granted April 14, 1964, pending appeal to the Supreme Court of the United States. Thus, we were given the opportunity to await opinions of that Court in related cases concerning reapportionment in other states before rendering a decision in the instant case.

It is obvious, of course, that the federal district court's decision of April 9, 1964, was made without the benefit of this Court's interpretation of relevant Pennsylvania constitutional provisions, and, more importantly, without the benefit of recent crucial and controlling decisions announced by the Supreme Court of the United States on June 15, 1964.[9] We believe, for reasons which will appear later in our opinion, that reliance on all that was said

der these circumstances, we must conclude that the parties do not, at least at present, have an adequate, speedy and complete remedy apart from that asserted in the case at bar and thus grounds for abstention are at this time lacking."

[8] As already indicated, this Court heard arguments on April 7, 1964. The federal district court filed its findings, opinion and order two days later.

[9] *Reynolds v. Sims*, U.S. , 84 S. Ct. 1362 (1964); *W.M.C.A., Inc. v. Lomenzo*, U.S. , 84 S. Ct. 1418 (1964); *Maryland Committee for Fair Representation v. Tawes*, U.S. , 84 S. Ct. 1442 (1964); *Davis v. Mann*, U.S. , 84 S. Ct. 1453 (1964); *Roman v. Sincock*, U.S. , 84 S. Ct. 1462 (1964); *Lucas v. Forty-Fourth General Assembly of State of Colorado*, U.S. , 84 S. Ct. 1472 (1964).

These cases shall hereinafter be referred to as the "*Reynolds* cases." The cases deal with the following states respectively, Alabama, New York, Maryland, Virginia, Delaware and Colorado.

and directed in the opinion of the district court, although excellent in many respects, would be constitutionally unsafe.

The General Assembly of Pennsylvania is entitled to an opportunity to enact reapportionment legislation pursuant to the recent *Reynolds* cases and to our interpretation here of pertinent provisions of the Pennsylvania Constitution. Since the Legislature is intimately acquainted with the characteristics of Pennsylvania and is primarily responsible for constitutional apportionment, action by that body, taken promptly and in good faith, is more likely to achieve a workable, constitutionally acceptable result than an apportionment following the suggested plan of the district court.

IV.

The Supreme Court of the United States has held that "seats in both houses of a bicameral state legislature must be apportioned on a population basis";[10] that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a susbtantial fashion diluted when compared with votes of citizens living in other parts of the State";[11] that "diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based on factors, such as race . . . or economic status";[12] and that state legislative districting schemes which give the same number

[10] *Reynolds v. Sims*, U.S. , , 84 S. Ct. 1362, 1385 (1964).

[11] *Ibid.*

[12] *Id.* at , 84 S. Ct. at 1384.

of representatives to unequal numbers of constituents would not be constitutionally sustainable.[13]

The Act of January 9, 1964, No. 1, which fixes the number of representatives at 209 divides the state into districts as follows:

(Population ratio based on division by 200 : 56,597)

County	District No.	District Total	No. Representatives	Population per Representative
Philadelphia	1	57,507	1	57,507
	2	123,445	2	61,722
	3	50,896	1	50,896
	4	52,246	1	52,246
	5	118,067	2	59,033
	6	59,203	1	59,203
	7	105,037	2	52,519
	8	66,017	1	66,017
	9	68,833	1	68,833
	10	53,550	1	53,550
	11	59,483	1	59,483
	12	166,944	3	55,648
	13	54,497	1	54,497
	14	50,616	1	50,616
	15	53,563	1	53,563
	16	51,055	1	51,055
	17	98,598	2	49,299
	18	65,622	1	65,622
	19	64,956	1	64,956
	20	53,986	1	53,986
	21	114,280	2	57,140

[13] *Id.* at , 84 S. Ct. at 1382.

County	District No.	District Total	No. Representatives	Population per Representative
	22	42,761	1	42,761
	23	64,982	1	64,982
	24	48,898	1	48,898
	25	137,260	2	68,630
	26	120,210	2	60,105
Adams		51,906	1	51,906
Allegheny	1	137,544	2	68,772
	2	50,690	1	50,690
	3	49,644	1	49,644
	4	49,413	1	49,413
	5	47,301	1	47,301
	6	132,115	2	66,058
	7	143,605	2	71,802
	8	53,515	1	53,515
	9	111,365	2	55,682
	10	63,944	1	63,944
	11	127,373	2	63,687
	12	62,839	1	62,839
	13	60,727	1	60,727
	14	235,672	4	58,918
	15	153,108	3	51,036
	16	150,968	1	50,322
Armstrong		79,524	1	79,524
Beaver	1	102,521	2	51,260
	2	104,427	2	52,213
Bedford		42,451	1	42,451
Berks	1	48,551	1	48,551
	2	59,639	1	59,639
	3	56,817	1	56,817
	4	60,781	1	60,781

County	District No.	District Total	No. Representatives	Population per Representative
	3	49,626	1	49,626
Blair	1	69,407	1	69,407
	2	67,863	1	67,863
Bradford		54,925	1	54,925
Bucks	1	236,905	4	59,226
	2	71,662	1	71,662
Butler	1	58,819	1	58,819
	2	55,820	1	55,820
Cambria	1	56,756	1	56,756
	2	95,114	2	47,557
	3	51,413	1	51,413
Cameron		7,586	1	7,586
Carbon		52,889	1	52,889
Centre		78,580	1	78,580
Chester	1	105,824	2	52,912
	2	104,784	2	52,392
Clarion		37,408	1	37,408
Clearfield		81,534	1	81,534
Clinton		37,619	1	37,619
Columbia		53,489	1	53,489
Crawford		77,956	1	77,956
Cumberland	1	62,193	1	62,193
	2	62,623	1	62,623
Dauphin	1	79,697	1	79,697
	2	140,558	3	46,853
Delaware	1	63,658	1	63,658
	2	255,556	4	63,889
	3	233,940	4	58,485
Elk		37,328	1	37,328
Erie	1	69,946	1	69,946

County	District No.	District Total	No. Representatives	Population per Representative
	2	68,494	1	68,494
	3	112,242	2	56,121
Fayette	1	56,971	1	56,971
	2	112,369	2	56,184
Forest		4,485	1	4,485
Franklin	1	44,617	1	44,617
	2	43,555	1	43,555
Fulton		10,597	1	10,597
Greene		39,424	1	39,424
Huntingdon		39,457	1	39,457
Indiana		75,366	1	75,366
Jefferson		46,792	1	46,792
Juniata		15,874	1	15,874
Lackawanna	1	55,074	1	55,074
	2	56,369	1	56,369
	3	67,164	1	67,164
	4	55,924	1	55,924
Lancaster	1	61,055	1	61,055
	2	217,304	4	54,326
Lawrence	1	53,353	1	53,353
	2	59,612	1	59,612
Lebanon		90,853	2	45,427
Lehigh	1	108,347	2	54,173
	2	119,189	2	59,594
Luzerne	1	55,300	1	55,300
	2	56,124	1	56,124
	3	55,926	1	55,926
	4	58,929	1	58,929
	5	57,142	1	57,142
	6	63,551	1	63,551

County	District No.	District Total	No. Representatives	Population per Representative
Lycoming	1	51,014	1	51,014
	2	58,353	1	58,353
Mercer	1	61,209	1	61,209
	2	66,310	1	66,310
McKean		54,517	1	54,517
Mifflin		44,348	1	44,348
Monroe		39,567	1	39,567
Montgomery	1	99,444	2	49,722
	2	128,234	2	64,117
	3	134,560	2	67,280
	4	154,444	3	51,481
Montour		16,730	1	16,730
Northampton	1	55,325	1	55,325
	2	52,438	1	52,438
	3	93,...	2	46,824
Northumberland	1	50,422	1	50,422
	2	53,716	1	53,716
Perry		26,582	1	26,582
Pike		9,158	1	9,158
Potter		16,483	1	16,483
Schuylkill	1	64,196	1	64,196
	2	108,831	2	54,416
Snyder		25,922	1	25,922
Somerset		77,450	1	77,450
Sullivan		6,251	1	6,251
Susquehanna		33,137	1	33,137
Tioga		36,614	1	36,614
Union		25,646	1	25,646
Venango		65,295	1	65,295
Warren		45,582	1	45,582

County	District No.	District Total	No. Representatives	Population per Representative
Washington	1	108,030	2	54,015
	2	109,241	2	54,620
Wayne		28,237	1	28,237
Westmoreland	1	64,337	1	64,337
	2	58,224	1	58,224
	3	60,717	1	60,717
	4	57,659	1	57,659
	5	49,827	1	49,827
	6	61,865	1	61,865
Wyoming		16,813	1	16,813
York	1	54,504	1	54,504
	2	64,744	1	64,744
	3	57,176	1	57,176
	4	61,882	1	61,882

An examination of the foregoing apportionment of representatives indicates quite clearly that in numerous instances the same number of representatives is allotted to unequal numbers of constituents. We realize, as does the Supreme Court of the United States, "that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters," and that "mathematical exactness or precision is hardly a workable constitutional requirement."[12] But the present districting scheme does not meet that requirement of the Fourteenth Amendment which "demands no less than substantially equal state legislative representation for all citizens of all places. . . ."[13]

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[12] *Id.* at , 84 S. Ct. at 1390.
[13] *Id.* at , 84 S. Ct. at 1385.

Several vivid examples, by no means exhaustive, illustrate the gross disparities which exist under the Act. Twelve counties, namely Clearfield, with a population of 81,534; Armstrong, with a population of 79,524; Centre, with a population of 78,580; Crawford, with a population of 77,956; Somerset, with a population of 77,450; Indiana, with a population of 75,366, Venango, with a population of 65,295; Bradford, with a population of 54,925; McKean, with a population of 54,517; Columbia, with a population of 53,489; Carbon, with a population of 52,889; and Adams, with a population of 51,906, are assigned only one representative each. Twelve other counties, namely, Forest, with a population of 4,485; Sullivan, with a population of 6,251; Cameron, with a population of 7,586; Pike, with a population of 9,158; Fulton, with a population of 10,597; Juniata, with a population of 15,874; Potter, with a population of 16,483; Montour, with a population of 16,730; Wyoming, with a population of 16,813; Snyder, with a population of 25,922; Union, with a population of 25,646; and Perry, with a population of 26,582, are also assigned one representative each. Furthermore, thirteen other counties, ranging in populations from a low of 28,237, to a high of 46,792, are also assigned one representative each.[18] These examples show, by cursory analysis, the existence of at least thirty-seven districts which differ widely in population but are equal in representation.

In examining the districts established by the Act, it is apparent that many population disparities resulted

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[18] Jefferson, 46,792; Warren, 45,582; Mifflin, 44,348; Bedford, 42,451; Monroe, 39,567; Huntingdon, 39,457; Greene, 39,424; Clinton 37,619; Clarion, 37,408; Elk, 37,328; Tioga, 36,614; Susquehanna, 33,137; and Wayne, 28,237.

from an allocation by the Legislature of at least one representative to each county in the state regardless of the population of that county. This allocation resulted from the assumption that the heretofore unquestioned pattern of one representative per county was mandated by the Pennsylvania Constitution, Article II, Section 17. Although the Supreme Court of the United States has recognized that "a consideration that appears to be of more substance in justifying some deviation from population-based representation in legislatures is that of insuring some voice to political subdivisions . . .,"[17] that Court has made it clear that "permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population."[18] The Supreme Court of the United States has stated:

> "Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body. This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in a legislative body being apportioned does not significantly exceed the number of counties. . . . [I]f, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legis-

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[17] *Reynolds v. Sims*, U.S. , , 84 S. Ct. 1362, 1391 (1964).

[18] *Ibid.*

lative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired." *Reynolds v. Sims*, 377 U.S. , 84 S. Ct. 1362, 1391-92 (1964).

Careful consideration of the legislative districting scheme embodied in the Pennsylvania Reapportionment Act, No. 1, as well as the populations of all of Pennsylvania's counties, compels us to rule that assignment of one seat to each county, regardless of population, results in the submergence of population as the controlling consideration in apportionment and is offensive to the Fourteenth Amendment to the Constitution of the United States. It must therefore be concluded that the Act of January 9, 1964, No. 1 (which provides for reapportionment of the House of Representatives), by substantially diluting the right to vote of individuals in some districts when compared with the rights of voters in other districts, is constitutionally insufficient.

V.

As we have indicated, the Supreme Court of the United States has held that reapportionment of both houses in a bicameral legislature must be based on population. The Act of January 9, 1964, No. 2, apportions the State Senate into senatorial districts, as follows:

(Population ratio per Senator: 226,387)

District No.	*County*	*1960 Population*	*No. of Senators*
1	Philadelphia (part)	260,767	1
2	Philadelphia (part)	255,869	1
3	Philadelphia (part)	251,415	1

District No.	*County*	*1960 Population*	*No. of Senators*
4	Philadelphia (part)	241,032	1
5	Philadelphia (part)	236,148	1
6	Philadelphia (part)	242,667	1
7	Philadelphia (part)	266,242	1
8	Philadelphia (part)	248,372	1
37	Allegheny (part)	236,359	1
38	Allegheny (part)	233,003	1
40	Allegheny (part)	241,633	1
42	Allegheny (part)	226,269	1
43	Allegheny (part)	237,367	1
44	Allegheny (part)	233,086	1
45	Allegheny (part)	222,104	1
9	Delaware (part)	255,888	1
26	Delaware (part)	297,266	1
12	Montgomery (part)	262,794	1
17	Montgomery (part)	253,888	1
39	Westmoreland	352,629	1
20	Luzerne	346,972	1
10	Bucks	308,567	1
13	Lancaster	278,359	1
11	Berks	275,414	1
29	Schuylkill, Lebanon	263,880	1
49	Erie	250,682	1
28	York	238,336	1
22	Lackawanna	234,531	1
21	Butler, Lawrence	227,604	1
16	Lehigh	227,536	1
15	Dauphin	220,255	1
46	Washington	217,271	1

District No.	County	1960 Population	No. of Senators
31	Mifflin, Juniata, Perry Cumberland	211,620	1
19	Chester	210,608	1
32	Fayette, Greene	208,764	1
47	Beaver	206,948	1
50	Mercer, Crawford	205,475	1
35	Cambria	203,283	1
41	Jefferson, Armstrong, Indiana	201,682	1
18	Northampton	201,412	1
24	Columbia, Lycoming, Montour	179,586	1
30	Blair, Huntingdon	176,727	1
25	Potter, McKean, Warren Clinton, Cameron	161,787	1
34	Centre, Clearfield	160,114	1
27	Northumberland, Snyder, Union	155,706	1
23	Bradford, Susquehanna, Tioga, Wyoming, Sullivan	147,740	1
48	Elk, Forest, Clarion, Venango	144,516	1
33	Franklin, Adams	140,078	1
36	Bedford, Fulton, Somerset	130,498	1
14	Carbon, Monroe, Pike Wayne	129,851	1

Examination of the foregoing senatorial districts shows that, in many instances, they contain widely varying numbers of people. Some examples of gross disparities in population can be cited. The tenth district on-

sisting of Bucks, with a population of 308,567; the twentieth district consisting of Luzerne, with a population of 346,972; the thirty-ninth district consisting of Westmoreland, with a population of 352,629, are each represented by one senator. The fourteenth district consisting of Carbon, Monroe, Pike and Wayne, with a population of 129,851; the thirty-sixth district consisting of Bedford, Fulton, and Somerset, with a population of 130,498; the thirty-third district consisting of Franklin and Adams, with a population of 140,078; the forty-eighth district consisting of Elk, Forest, Clarion, and Venango, with a population of 144,516; the twenty-third district consisting of Bradford, Susquehanna, Tioga, Wyoming, and Sullivan, with a population of 147,740, are each represented by one senator. In the examples just cited, senators from the tenth, twentieth, and thirty-ninth districts each represent more than two times as many people as do senators from each of the other districts.

In *Reynolds v. Sims*, 377 U.S. , 84 S. Ct. 1362, 1382 (1964), the Supreme Court of the United States said: "If a state should provide that the votes of citizens in one part of the state should be given two times, or five times, or ten times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote in the disfavored areas had not been effectively diluted."

Careful consideration of the entire legislative districting scheme for the Pennsylvania Senate, including not only the districts which we have cited above, but other districts as well, requires us to conclude that the Act of January 9, 1964, No. 2, which provides for reapportionment of the Senate by substantially diluting the right to vote

of individuals in some districts when compared with the rights of voters in other districts, fails to meet the requirements of the Fourteenth Amendment to the Constitution of the United States.

VI.

In light of our conclusion that the Acts of January 9, 1964, Nos. 1 and 2, are constitutionally insufficient, we have given much consideration to the remedy which should be granted. Recent decisions of the Supreme Court of the United States make it clear that it is for us to determine "whether the imminence of the 1964 . . . general elections requires the utilization of the apportionment scheme contained" in those acts notwithstanding their invalidity, as the following excerpts indicate:

> "Since primary responsibility for legislative apportionment rests with the legislature itself and since adequate time exists in which the Maryland General Assembly can act, the Maryland courts need feel obliged to take further affirmative action *only if the legislature fails to enact* a constitutionally valid state legislative apportionment scheme in a timely fashion *after being afforded a further opportunity by the courts to do so.* However, under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan. We therefore reverse the judgment of the Maryland Court of Appeals, and remand the case to that Court for further proceedings not inconsistent with the views stated here and in our opinion in Reynolds v. Sims." (Emphasis supplied.)

Maryland Committee for Fair Representation v. Tawes, 377 U.S. . . , 84 S. Ct. 1442, 1452-53 (1964).

"Since all members of both houses of the New York Legislature will be elected in November 1964, the court below, acting under equitable principles, must now determine whether, because of the imminence of that election and in order to give the New York Legislature an opportunity to fashion a constitutionally valid legislative apportionment plan, it would be desirable to permit the 1964 election of legislators to be conducted pursuant to the existing provisions, or whether under the circumstances the effectuation of appellants' right to a properly weighted voice in the election of state legislators should not be delayed beyond the 1964 election."

WMCA, Inc. v. Lomenzo, 377 U.S. . . , 84 S. Ct. 1418, 1429 (1964).

"Since the apportionment of seats in the Colorado Legislature . . . fails to comport with the requirements of the Equal Protection Clause, the decision below must be reversed. Beyond what we said in our opinion in Reynolds, we express no views on questions relating to remedies at the present time. On remand, the District Court must now determine whether the imminence of the 1964 primary and general elections requires that utilization of the apportionment scheme contained in the constitutional amendment be permitted; for purposes of those elections, or whether the circumstances in Colorado are such that appellants' right to cast adequately weighted votes for mem-

bers of the State Legislature can practicably be effectuated in 1964."

> *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 377 U.S. , , 84 S.Ct. 1472, 1487-88 (1964).

It is obvious that the Pennsylvania Legislature cannot properly act to reapportion itself in the short time remaining before the election of November 3, 1964, and months after the April 28, 1964 primary election. We do believe, however, that the Legislature made an earnest effort to reapportion itself in 1963. Unfortunately, it was then without the benefit of the views of the Supreme Court of the United States expressed in the *Reynolds* cases and without an interpretation by this Court of important and relevant provisions of the Pennsylvania Constitution. Serious disruption of orderly state election processes and basic governmental functions would result from immediate action by any judicial tribunal restraining or interfering with the normal operation of the election machinery at this late date. The Legislature should not be denied a reasonable opportunity to enact new reapportionment legislation. We therefore hold that the 1964 election of Pennsylvania legislators should and must be conducted pursuant to the Acts of January 9, 1964, Nos. 1 and 2.[19] Under no circumstances, however, may the

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[19] These acts represent considerable improvement over previous legislation. The hearing judge, in his findings of fact, said:

> "The last apportionment of the Senate prior to the 1963 Apportionment Act aforesaid was under the Act of May 10, 1921, P. L. 449, as amended by Act of April 26, 1923, P. L. 106 (25 P.S. 2201). Under said 1921-1923 Acts, Philadelphia was divided into

1966 election of members of the Pennsylvania Legislature be conducted pursuant to a constitutionally invalid plan.

> eight senatorial districts, which under 1921 [sic] population statistics ranged in percentage of district population to total Philadelphia population from a low of 7.1% (3rd district) to a high of 15.6% (8th district). This imbalance of district percentages to total Philadelphia figures became successively more marked with each decennial census. Under 1960 census figures, the range is from a low of 2.5% (3rd district) to a high of 26.1% (8th district)."

Under the 1964 Act, this imbalance of district percentages in Philadelphia has been largely corrected. (The ratio per senator is 226,387 – 11,319,366 divided by 50.) For example, the third district with one senator now has a population of 251,415, while the eighth district has a population of 248,372. Several other examples of districts in which imbalances were corrected are: District No. 38, which had a population of 134,345 per senator, now has a population of 233,003 per senator; District No. 40, which had a population of 328,712, now has a population of 241,633 per senator; District No. 42, which had a population of 109,140, now has a population of 226,269 per senator; District No. 43, which had a population of 157,955, now has a population of 237,367 per senator; District No. 44, which had a population of 338,549, now has a population of 233,086; District No. 45 which had a population of 509,886, now has a population of 222,104.

In the House of Representatives, where the ratio per representative is 54,150 (11,319,366 divided among 209 members) or 56,597 (if the population is divided by 200), many population disparities were lessened. Several examples can be cited: District No. 2 in Allegheny County, which had a population of 29,883 per representative, now has a population of 50,690 per representative; District No. 3 in Allegheny County, which had a population of 38,804, now has a population of 49,644 per representative; District No. 15 in Allegheny County, which had a population of 75,506, now has a population of 51,036 per representative; District No. 16 in Allegheny County, which had

The task of reapportionment is not only the responsibility of the Legislature; it is also a function which can be best accomplished by that elected branch of government. The composition of the Legislature, the knowledge which its members from every part of the state bring to its deliberations, its techniques for gathering information, and other factors inherent in the legislative process, make it the most appropriate body for the drawing of lines dividing the state into senatorial and representative districts. We expect, therefore, that the General Assembly will enact reapportionment legislation in accordance with constitutional requirements.

VII.

In order to prevent undue confusion on the part of those who are assigned the primary task of reapportionment, we feel compelled to discuss several provisions of the Constitution of Pennsylvania as well as to comment upon certain aspects of the opinion filed by the district court.

Article II, Section 16, of the Pennsylvania Constitution, which relates to senatorial districts, provides:

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a population of 74,465, now has a population of 50,322 per representative; Beaver County District No. 1, which had a population of 76,152, now has a population of 51,261; District No. 2 in Bucks County, which had a population of 139,293, now has a population of 71,662; District No. 26 in Philadelphia County, which had a population of 36,459, now has a population of 60,105; District No. 1 in Chester County, which had a population of 49,034, now has a population of 52,912; while District No. 2 in Chester County, which had a population of 80,787, now has a population of 52,392; and District No. 3 in Delaware County, which had a population of 90,026, now has a population of 58,485.

"The State shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No ward, borough, or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty."

The first sentence of Section 16 embraces fully the population principle expressed by the Supreme Court of the United States in the *Reynolds* cases. The Constitution's intention to make population the starting point and controlling criterion in senatorial districting is manifest and mandatory. It acknowledges what the Supreme Court of the United States has also acknowledged, "that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters,"[20] by providing that the senatorial

[20] *Reynolds v. Sims*, U.S. , , 84 S. Ct. 1362, 1390 (1964).

districts "should be as nearly equal in population as may be". But this phrase cannot and must not be construed to permit substantial dilution of the right to vote. It is our view that Section 16, when construed as a whole, demands that Senate apportionment legislation respect county lines and lines of other political subdivisions (such as wards, boroughs, and townships), insofar as possible, without doing violence to the population principle enunciated by the first sentence of Section 16 and also by the Fourteenth Amendment to the Federal Constitution. The Supreme Court of the United States has said:

> "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. . . . Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state."
>
> *Reynolds v. Sims*, 377 U.S. ___, 84 S. Ct. 1362, 1390 (1964).

We hold, therefore, that Article II, Section 16 of the Pennsylvania Constitution requires that senatorial reapportionment legislation must maintain the integrity of counties and other political subdivisions, insofar as possible, and must provide for compact districts of contiguous

territory, subject always to the overriding objective and mandate that such districts shall be "as nearly equal in population as may be." We must emphasize that, if necessary, any political subdivision or subdivisions may be divided or combined in the formation of districts where the population principle cannot otherwise be satisfied. Furthermore, the number of senators per political subdivision may not be limited if such limitation violates the equal-population principle.

Article II, Section 17, of the Pennsylvania Constitution, which relates to the House of Representatives, provides:

> "The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives."

It is clear that the first sentence of Section 17 is in accord with the requirements of the federal constitution. It expressly recognizes the equal population principle as the controlling factor in apportioning the House of Representatives. Division of the population of the state by two hundred supplies "a ratio" and a starting point in the construction of districts. In contrast to Section 16 which provides for a fixed number, i.e., "fifty senatorial districts" with each district "entitled to elect one Senator," nothing in Section 17 precludes the establishment of a House of Representatives consisting of more than two hundred members, provided, of course, the equal-population rule is observed.

The requirement that apportionment should be among the several counties further signifies an intention to respect county lines and to utilize counties as units of representation to the maximum extent consistent with the equal-population principle. Indeed, Section 17, when considered as a whole, demands that the boundaries of all political subdivisions be respected when not in conflict with the overriding population principle. It must be interpreted to require that counties with small populations, if necessary, be joined with other counties for the purpose of electing and sharing a representative. We hold that no provision of Section 17 prohibits the division or combination of counties in the formation of districts where the population principle cannot otherwise be satisfied.

VIII.

Although the opinion of the district court ought to anticipate some of the requirements laid down by recent decisions of the Supreme Court of the United States, we feel that it differs in some material respects from the

views contained in those controlling decisions. Throughout the district court's opinion runs the theme that if there is equality of representation as between rural groups of counties on the one hand and urban groups of counties on the other, then Pennsylvania will be apportioned constitutionally.[21] With this theme we cannot agree. Unconstitutional discrimination may exist irrespective of the rural or urban character of the underrepresented or overrepresented district. Those whose task it is to reapportion the Pennsylvania Legislature must approach their assignment with the understanding that they are to create districts which are as nearly equal in population as is practicable.

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."
>
> *Reynolds v. Sims*, 377 U.S. , , 84 S.Ct. 1362, 1389-90 (1964).

Furthermore, the district court announced that it would not invalidate unequal representation resulting from use of the county as a district, provided that the disparity from the norm does not exceed one-half of a ratio. In our view, the establishment of a rigid mathematical standard is inappropriate in evaluating the constitutional validity of a state legislative apportionment scheme. In *Roman v. Sincock*, 377 U.S. , n.21, 84

[21] This, of course, is not so, since inequalities may exist between urban or rural districts themselves.

S. Ct. 1462, 1470 n.21 (1964), the Supreme Court pointed out that the lower court in that case had suggested that population-based variance ratios smaller than 1½ to 1 would presumably comport with minimal constitutional requisites, while ratios in excess thereof would necessarily involve deviations from population-based apportionment too extreme to be constitutionally sustainable. The Court said:

> "Our affirmance of the decision below is not meant to indicate approval of the District Court's attempt to state in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population. In our view the problem does not lend itself to any such uniform formula, and *it is neither practicable nor desirable to establish rigid mathematical standards* for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause. Rather, *the proper judicial approach is to ascertain whether*, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, *there has been a faithful adherence to a plan of population-based representation*, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." (Emphasis supplied.)

Finally, the opinion of the district court declared that there is a discrimination in voting power when voters may, by reason of the arrangement of legislative districts, vote for two, or three, or even four representatives, while others are restricted to voting for one only. Language which appears in the opinion of Chief Justice Warren

in *Reynolds*, and other cases, indicates that the presence of some multi-member districts in one legislative house is not per se unconstitutional:

> "One body could be composed of single-member districts while the other could have at least some multimember districts."
>
> *Reynolds v. Sims*, 377 U.S. , , 84 S. Ct. , 1362, 1389 (1964).

> "Single-member districts may be the rule in one State; while another State might desire to achieve some flexibility by creating multimember or floterial districts."
>
> *Id.* at , 84 S. Ct. at 1390.

> "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective."
>
> *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 377 U.S. , n. 21, 84 S. Ct. 1472, 1483 n. 21 (1964).

While we do not believe that the creation of multi-member districts of itself would violate the Federal Constitution simply because the voters in a particular district (where justified by population) would vote for two or more representatives while those in another district would vote for a lesser number, we do believe that a legislative scheme which creates single-member districts and multi-member districts in an arbitrary manner would be objectionable. We would agree with the district court, however, that in the absence of any reasonable justification

(historical or otherwise), such districting might be the result of gerrymandering for partisan advantage and, in that event, would be arbitrary and capricious. In light of the constitutional pitfalls inherent in such a districting scheme, it would be more prudent to approach the matter of apportionment by setting up single-member districts unless valid and compelling reasons exist which require the creation of some multi-member districts.

Our interpretation of the relevant provisions of the Pennsylvania Constitution makes mandatory only such requirements as are in harmony with the Fourteenth Amendment to the Constitution of the United States. We hope the difficult and complex task of the Legislature will be clarified by the guidelines set out in this opinion as well as by the *Reynolds* cases.

We have indicated that it is our expectation that the Legislature will proceed in timely fashion to enact reapportionment laws which conform to constitutional requirements. We must recognize, however, that if the General Assembly fails to act in a timely fashion, we shall be obliged to take necessary affirmative action to insure that the 1966 election of Pennsylvania legislators will be conducted pursuant to a constitutionally valid plan. Proper regard for our responsibility compels us to retain jurisdiction of this matter pending legislative action.[*]

Should the Legislature fail to enact a constitutionally valid plan of reapportionment as soon as practical, but not later than September 1, 1965, we shall take such action

[*] Since a new scheme of legislative districting for the entire state, including Bucks County, must be devised in accordance with the principles we have outlined, it is unnecessary for us to reach the specific issues raised by the intervenors.

as may be appropriate in light of the then existing situation.

Jurisdiction retained in accordance with this opinion.

Mr. Chief Justice Bell joins in the opinion of the Court and also files a concurring opinion.

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Supreme Court of the United States

October Term, 1964.

No. 201.

WILLIAM W. SCRANTON, Governor, et al.,
Appellants,

v.

IRA WALTON DREW, et al.,
Appellees.

On Appeal From the United States District Court for the Middle District of Pennsylvania.

REPLY TO "SUPPLEMENT TO JURISDICTIONAL STATEMENT".

Of Counsel:
GONCER M. KRESTAL,
BLANK, RUDENKO, KLAUS & ROME,
1660 Suburban Station Building,
Philadelphia, Pennsylvania 19103

Of Counsel:
HERBERT W. YANOWITZ,
WOLF, BLOCK, SCHORR & SOLIS-COHEN,
12th Floor Packard Building,
Philadelphia, Pennsylvania 19102.

MARVIN COMISKY,
Counsel for Appellees,
Ira Walton Drew, et al.

THOMAS D. McBRIDE,
BERNARD M. BORISH,
Counsel for Appellees,
Michael Johnson, et al.

International, 711 So. 50th St., Phila., Pa. 19143

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 201.

WILLIAM W. SCRANTON, ET AL.,
Appellants,

v.

IRA WALTON DREW, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

REPLY TO "SUPPLEMENT TO JURISDICTIONAL STATEMENT".

On Tuesday, September 29, 1964 the Supreme Court of Pennsylvana filed its opinion in *Butcher v. Bloom*, declaring invalid the same Pennsylvania Apportionment Laws which the three-judge District Court had already declared invalid on April 14, 1964. On Friday of the same week appellees were served with the Commonwealth's "Supplement to Jurisdictional Statement", a document prepared apparently in great haste. In it the Commonwealth concedes that the 1964 Apportionment Legislation is invalid and thereby abandons the points raised in its appeal. Upon this admission, the decision of the Court below should be affirmed.

And for no apparent reason other than the preference of the opinion of the Pennsylvania Supreme Court over that of Judge Maris, the Commonwealth seeks to divest the three-judge District Court of jurisdiction to enforce its original decree. On analysis, the "Supplement to Jurisdictional Statement" is simply another elaborately contrived effort to oust the jurisdiction of the three-judge Court. This latest move, when viewed in the light of the prior abortive maneuvers at the outset of these cases, seems to be another attempt by the Commonwealth to choose what it obviously considers to be the more favorable forum.

Initially the plaintiffs in *Butcher* were intervening defendants in the District Court case.[1] At the hearing on the merits the Commonwealth and the intervening defendants jointly moved for a stay of the proceedings and requested the three-judge District Court to abstain, pending determination by the State Court. Both motions were dis-

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1. Although the nominal parties in both cases differ slightly, the Philadelphia Committee of Seventy and their attorneys appeared before both forums on *opposite* sides of the case.

On December 4, 1963 Donald C. Rubel and Anne D. McKinley, by their attorneys R. Lawrence Coughlin, Jr., Carter R. Buller and Edward E. Russell filed a motion for leave to intervene in this case as defendants. The intervening defendants appeared at the hearing on January 16, 17, 1964, filed motions requesting the Court to stay the proceedings and to abstain and, when these motions were denied, introduced testimony. On March 30, 1964, the intervening defendants through their attorneys, Buller and Russell, filed a motion for leave to withdraw on the grounds that they were the plaintiffs in the State Court proceedings which presented to the Supreme Court of Pennsylvania "certain of the issues now before" the District Court.

The entry of appearance for Butcher, Rubel and McKinley (the latter two individuals are the same parties who appeared in these proceedings) in the Supreme Court of Pennsylvania was filed by R. Lawrence Coughlin, Jr. And the Brief before that Court was signed, in addition, by Buller, Tyson W. Coughlin, Russell, Eugene F. Waye and Arthur E. Newbold, III. All of the named parties are members of the Philadelphia Committee of Seventy, a private organization which acts as a watchdog for good government in Philadelphia. The various attorney are appearing on behalf of the organization.

missed by the District Court, whereupon the intervening defendants then withdrew from that case and prosecuted the case in the State Court.

After the three-judge District Court filed its opinion and judgment on April 14, 1964, the Commonwealth appealed to this Court and, *despite the intervening decisions of this Court*, earnestly argued that the apportionment legislation was valid and the three-judge District Court was wrong.

Now comes the Commonwealth, no longer contending that the law is valid, yet persisting in the spurious contention that the three-judge Court was wrong, suddenly converted, not by the force of this Court's opinions, but solely on the basis that the Commonwealth is bound to obey the mandate of the Pennsylvania Supreme Court in *Butcher* and, therefore, waives its right of appeal in that case.

At this point, there no longer is any controversy over the validity of the 1964 Apportionment Laws of Pennsylvania. They have been found invalid both by the United States District Court and the Pennsylvania Supreme Court, and the Commonwealth no longer pretends otherwise.

But the case is by no means moot. The three-judge District Court, in accordance with Appellee's prayer, retained jurisdiction to insure enactment of a valid apportionment law in Pennsylvania. The supervisory duties of the District Court will not be terminated until such valid legislation is enacted.

The true remaining question, therefore, is one of enforcement—to insure that the Pennsylvania General Assembly will enact valid legislation in ample time for the election of legislators for the 1967 session of the Pennsylvania General Assembly. The relationship of the United States District Court and the Pennsylvania State Court in working this out should be considered in the first instance by the District Court on the basis of any motions made to it for stay or otherwise.

If the Commonwealth desires to stay the proceedings in the District Court for the reasons stated in its Supplement to Jurisdictional Statement or for any other reasons, it can file an appropriate motion with the District Court. The District Court is the proper forum to consider all the questions of equitable abstention and deference to state jurisdiction which the Commonwealth may decide to raise.

There is nothing in this case which merits the application of the doctrine of equitable abstention. The three-judge District Court so found in rejecting the previous motion for abstention. Cf. *Mann v. Davis*, 84 S. Ct. 1453 (1964). In any event, the three-judge District Court should have the opportunity to consider in the first instance whether it should now abstain. The District Court's jurisdiction should not be ousted peremptorily without affording that Court the opportunity to review the situation that now exists.

The Commonwealth is presuming to tell this Court that because the Commonwealth, one of the parties to this litigation, considers the opinion of the Supreme Court of Pennsylvania to be sounder than that of the three-judge District Court—a view from which we strenuously dissent—this Court without briefs, without arguments, without reviewing the respective records, and without even having the State Court litigation properly before it, should reverse the District Court and oust its jurisdiction.

Rather, this Court should either affirm the decision of the three-judge District Court, which admittedly is correct on the merits, or it should dismiss the appeal of the Commonwealth and remand the case to the District Court for implementation of its decree.[2]

2. There is ample precedent for this Court to dismiss the appeal without vacating the decree of the Court below. See, e.g., *Cantos v. Styer*, 329 U. S. 686 (1946); *Uyeki v. Styer*, 329 U. S. 689 (1946); *Pan American Airways Corp. v. W. R. Grace & Co.*, 332 U. S. 827 (1947); *Schenley Distilling Corp. v. Anderson*, 333 U. S. 878 (1948).

Moreover, the Commonwealth's request that this Court retain jurisdiction should also be denied. This Court should not be burdened with supervision in the first instance of enforcement procedures relating to a lower court's decree. This is peculiarly the function of the lower court which entered the decree. This Court will be interested only in reviewing the propriety of the discretion exercised by the District Court in enforcing its judgment.

We respectfully request, therefore, that the Commonwealth's application be denied, that the judgment of the District Court be affirmed and the case remanded to the United States District Court for further proceedings in connection with enforcement of its decree.

Respectfully submitted,

MARVIN COMISKY,
Counsel for Appellees,
Ira Walton Drew, et al.

Of Counsel:
GONCER M. KRESTAL,
BLANK, RUDENKO, KLAUS & ROME,
1660 Suburban Station Building,
Philadelphia, Pennsylvania. 19103.

THOMAS D. McBRIDE,
BERNARD M. BORISH,
Counsel for Appellees,
Michael Johnson, et al.

Of Counsel:
HERBERT W. YANOWITZ,
WOLF, BLOCK, SCHORR & SOLIS-COHEN,
12th Floor Packard Building,
Philadelphia, Pennsylvania. 19102.